

The Problems of NATO's R2P
Implementation in Libya: Has the
International Community learnt its
lessons?

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A thesis submitted on 26th October 2017 for the Degree of
Master of International Relations (Advanced), Department of
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Abstract

The international community's speedy and decisive response to Gaddafi's brutal oppression of innocent civilians raised new optimism for effective cooperation in humanitarian protection. However, as the situation unravelled it became clear that the way Responsibility to Protect (R2P) was implemented in Libya it appeared to have confirmed the long-standing suspicions of several non-western nations, who often perceived that the doctrine may be used as a pretext for regime change. The crisis also highlighted the problem of the United Nation's decision making process regarding the use of coercive action and the consequences of not assuming post-intervention Responsibility to Rebuild in conflict prone areas. This thesis evaluates the problems associated with NATO's military intervention in Libya to draw upon the lessons that can be learnt for the doctrine of R2P. In addition, it also analyses how the international community has moved forward with these lessons. By examining the 'Responsibility while Protecting' and the 'Code of Conduct', the thesis argues that even though these two initiatives were significant developments, the international community has not yet learnt their lessons regarding R2P's proper implementation for humanitarian protection missions. The thesis concludes with the suggestion that the use of force in global politics can sometimes be necessary and hence, future military interventions for humanitarian protection must be based on the criteria provided by the Just War Tradition (as specified in the original ICISS report), which will strengthen and legitimise R2P's present framework.

Introduction

The case of Libya demonstrates both the promises and the limitations associated with the doctrine of Responsibility to Protect (R2P) as a call for military intervention for humanitarian protection purposes. On the 17th of March 2011, the United Nations (UN) authorised military intervention in Libya to protect the country's civilians against Gaddafi's widespread brutal attacks. However, as bad as Libya's human rights situation was under Gaddafi's rule, it has only gotten worse since the North Atlantic Treaty Organisation (NATO) coalition ousted him in 2011. The country ruled by a dictator - Muammar Gaddafi for almost 42 years, has now transformed into a failed state due to the constant feud for power between rival militants associated with the various local, tribal, regional, Islamist and criminal factions. Moreover, after Gaddafi's fall the vacuum of weak government control left behind has proven to be advantageous for the ISIS (Islamic State of Iraq and al-sham)¹ who have not only established a stronghold in different parts of the region but "are also using Libya as a platform for their resurgence".² Consequently, Libya has become a safe haven for militias affiliated with both al-Qaeda and ISIS. This all occurs "amidst a backdrop of widespread rape, extrajudicial killings, forcible disappearances and torture that complete the picture of a state that is

¹ "A group based in the Middle East, mainly in Iraq and Syria, who have extreme religious beliefs. They use brutal violence against anyone that does not agree with their views." They are now listed as one of the top terrorist groups of the world. See, BBC Newsround, "Guide: What is Islamic State?", March 23, 2017, accessed August 8, 2017, <http://www.bbc.co.uk/newsround/34965297>.

² Daily Mail Australia, "ISIS digs its claws into Libya: Terror group 'is using chaotic country as a platform for its resurgence' after being chased of Iraqi and Syrian strongholds," August 1, 2017, accessed August 3, 2017, <http://www.dailymail.co.uk/news/article-4747018/ISIS-using-chaotic-Libya-platform-resurgence.html>.

failed to the bone.”³ Juxtaposing these facts with the international community’s responsibility to protect civilians against mass atrocities, NATO’s military intervention in Libya has renewed the debate over R2P’s proper implementation.

The significance of Libya for the evaluation of R2P

In response to Gaddafi’s brutal crackdown on innocent civilians, the UN Security Council (UNSC) passed Resolution 1973 on the 17th of March 2011, allowing the international community to use ‘all necessary measures’ for humanitarian protection. Since the passage of the resolution and the subsequent military intervention, debates around the international community’s responsibility to protect have grown exponentially. Policymakers and scholars have formulated different judgements about what Libya entailed for the doctrine of R2P. The director of the Global Centre for the Responsibility to Protect, Dr Adams, described Libya as a “key turning point in the history of R2P, where the debates shifted from battle around ideas to a battle around implementation”.⁴ According to Evans, “Libya proved to be almost a textbook illustration justifying R2P principles.”⁵ In much of the literature on R2P and Libya, scholars

³ Garikai Chengu, "Libya: From Africa's Richest State Under Gaddafi, to Failed State After NATO Intervention," *Global Research*, September 14, 2016, accessed August 4, 2017, <https://www.globalresearch.ca/libya-from-africas-richest-state-under-gaddafi-to-failed-state-after-nato-intervention/5408740>.

⁴ Interview with Harvard Carr Center for Human Rights Policy, New York, November 2014, as quoted in, Sarah Brockmeier, Oliver Stuenkel, and Marcos Tourinho, "The Impact of the Libya Intervention Debates on Norms of Protection," *Global Society* 30, no. 1 (2015): 113.

⁵ Ramesh Thakur, "R2P after Libya and Syria: Engaging Emerging Powers," *The Washington Quarterly* 36, no. 2 (2013): 61.

acknowledge that the Libyan case represents an unprecedented moment in the history of the UNSC and R2P, particularly Resolution 1973, as it was the first time that the Council explicitly authorised the use of force against the will of a functioning government. Along these lines, Williams has highlighted the previous failures of the UNSC to take military action against the consent of a ruling government and considers the Libyan crisis as an important stepping-stone for the doctrine. He argued that the UNSC “entered a new political terrain with Resolution 1973: going to war against a regime with the stated aim of protecting civilians.”⁶ These arguments imply that the Libyan case is extremely significant for a critical analysis of the R2P doctrine. Before delving into these discussions further, it is important to outline the context of the doctrine’s formulation.

The term R2P, first coined in 2001 by the International Commission on Intervention and State Sovereignty (ICISS), came about as a conscious effort to provide guidance to the debates over humanitarian intervention and transform the contentious ‘right to intervene notion’ to the less controversial idea of ‘sovereignty as a responsibility to protect’.⁷ The R2P doctrine not only outlines the “thresholds of suffering beyond which the norm of non-intervention would give way to the exercise of international responsibilities, but it also legitimizes coercive action for humanitarian

⁶ Paul D. Williams, "The Road to Humanitarian War in Libya," *Global Responsibility to Protect* 3 (2011): 249.

⁷ International Commission on Intervention and State Sovereignty, "The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty", Canada: International Development Research Centre (2011), as quoted in, Andrew Garwood-Gowers, "The Responsibility to Protect and the Arab Spring: Libya as the exception, Syria as the Norm?" *UNSW Law Journal* 36, no. 2 (July 2013): 597.

purposes as an option of last resort.”⁸ However, from the outset, the dimension of military intervention under R2P’s premise was a point of major concern for many countries, particularly non-Western nations that regarded the principle of non-interference as essential to safeguarding their sovereignty. These countries were sceptical as they feared that the doctrine might be used by powerful Western states for the pursuit of other strategic or political objectives. In order to mitigate such fears and garner support for R2P, the formulators of the doctrine espoused a diplomatic strategy of shifting the emphasis to less contentious elements of the doctrine, namely prevention and state assistance.⁹

Just War Theory and Humanitarian Intervention

Within the discipline of International Relations (IR), the debate around humanitarian interventions and the use of coercive action has long revolved around the Just War Theory, and the ethical virtues of warfare. War, Augustine suggested, “is only legitimate when a wrong has been perpetrated by the opposing side, a wrong so grievous that neither the wrongdoer nor their victims would be well served by leniency.”¹⁰ The Just War Theory therefore, offers a moral casuistry necessary for military interventions and imposes certain limits on the conduct of war. Although

⁸ International Commission on Intervention and State Sovereignty, “The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty”, Canada: International Development Research Centre (2011), as quoted in Time Dunne and Jess Gifkins, “Libya and the state of intervention,” *Australian Journal of International Affairs* 65, no. 5 (2011): 518.

⁹ Andrew Garwood-Gowers, “The BRICS and the Responsibility to Protect: Lessons from the Libyan and Syrian Crisis,” *Responsibility to Protect in Theory and Practice Conference* 2013, 305.

¹⁰ David D. Corey and J. Daryl Charles, *The just war tradition: An introduction* (Wilmington, DE: ISI Books, 2012), as quoted in Zamaris Saxon and Lara Pratt, “From Cause to Responsibility: R2P as a Modern Just War,” *The University of Notre Dame Australia Law Review* 17, no. 7 (2015): 140.

classical studies of the Just War Theory initially identified two criteria for judging the morality of war - the reasons for going to war (*jus ad bellum*) and the means of conducting warfare (*jus in bello*) - subsequent developments in the theoretical field have since assigned equal importance to the justice in the aftermath of war (*jus post bellum*).¹¹ The modern just war theory is placed in an "international community compound by states, which are legitimate to conduct war only in case of aggression."¹² As Walzer mentions, the principles of sovereignty and territorial integrity are sacrosanct: "any use of force or imminent threat of force by one state against the political sovereignty or territorial integrity of another constitutes aggression and is a criminal act."¹³

Walzer's work was seminal in reinvigorating the discussion of Just War Theory in IR but contemporary scholars such as McMahan and Wheeler have further developed the revisionist approach. In his analysis, McMahan highlights and defends various implications of the revisionist conception of the Just War Theory – "that a just cause is necessary for the satisfaction of any of the other conditions of a just war, that there can be various just causes for war other than defence against aggression and that both sides in a war can have a just cause."¹⁴ His understanding of a just war is not

¹¹ "Under the first heading the theory sets a number of conditions; the most important by far is that the cause for which a state goes to war be just. Under the second heading, the paramount principle is that only legitimate targets (soldiers and a narrowly circumscribed class of civilians) may be deliberately attacked." as quoted in Igor Primoratz, "Michael Walzer's Just War Theory: Some Issues of Responsibility," *Ethical Theory and Moral Practice* 5, no. 2 (2002): 222.

¹² Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustration*, 3rd ed. (New York: Basic Books, 2002), as quoted in, Alexandru Ioan Cuza, "The Responsibility to Protect: A just war theory based analysis," *SEA - Practical Application of Science*, 5th ser., 2, no. 3 (2014): 343.

¹³ *ibid.*

¹⁴ Jeff McMahan, "Just Cause for War," *Ethics & International Affairs* 19, no. 3 (2005):1-10.

limited to the classical moral justification of a war but goes much beyond it. In a similar vein, Wheeler also suggests that “it is misleading to think of Just War theory as a check-list for political and military leaders contemplating the use of force.”¹⁵ He develops on the understanding of the American Bishops who believe that “the Just War Theory does not provide a set of mechanical criteria that automatically yields a simple answer, but a way of moral reasoning to discern the ethical limits of action.”¹⁶ With these caveats, Wheeler identifies “six substantive principles that should be applied when judging the humanitarian credentials of particular cases of intervention- just cause, last resort, good over harm, proportionality, right intention and reasonable prospect.”¹⁷

This cognitive context of the classical and revisionist just war theory contributed to the development of the R2P doctrine. The ICISS Report’s six-fold criteria for intervention, namely right authority, just cause, right intention, last resort, proportional means and reasonable prospects, directly reflect the principles of the Just War Theory, which include just cause, right intention, proper authority, last resort, probability of success, and proportionality.¹⁸ However, even though these principles provide an important benchmark for justifying military interventions for

¹⁵ Nicholas J. Wheeler, "Legitimizing Humanitarian Intervention: Principles and Procedures," *Melbourne Journal of International Law* 2 (2001):554.

¹⁶ Hugh Beach, 'Secessions, Interventions and Just War Theory', *Pugwash Occasional Papers*, 1999, 35-6, as quoted in Nicholas J. Wheeler, "Legitimizing Humanitarian Intervention: Principles and Procedures," *Melbourne Journal of International Law* 2 (2001):554.

¹⁷ Nicholas J. Wheeler, "Legitimizing Humanitarian Intervention: Principles and Procedures," *Melbourne Journal of International Law* 2 (2001):554.

¹⁸ Amitav Acharya, "The R2P and Norm Diffusion: Towards A Framework of Norm Circulation," *Global Responsibility to Protect* 5, no. 4 (2013): 474.

humanitarian protection purposes, they were excluded from both the 2005 UN World Summit Outcome Document and the 2009 UN Secretary General's Report on the doctrine of R2P. The aim of my thesis is to signify the appropriateness of the Just War Theory in lending guidance to R2P's application. It does this by providing an empirical study on the use of force in Libya.

This thesis seeks to answer the question *"What practical lessons were learnt for the doctrine of Responsibility to Protect from the military intervention in Libya and how has the international community moved forward with these lessons?"* In doing so, it attempts to recount the trajectory of the international community's engagement with the norm during the Libyan crisis and seeks to analyse how the international community has responded to the lessons learnt from NATO's military intervention in 2011. The thesis unfolds in four parts and advances four main arguments that support the central conclusion, namely that, the international community has not yet learned their lessons for R2P's proper implementation in future mass atrocity situations. First, it briefly discusses the course of the UNSC's invocation of R2P in Libya and describes the differences in opinion regarding the scope of the operation. It argues that the speedy decision to intervene in Libya came about due to the weaknesses of the Council's decision-making process and therefore, stresses upon the need for a careful analysis of complex situations prior to

authorising coercive actions. Second, it assesses NATO's advancement with its military operations in Libya and highlights the controversies that erupted in the political arena due to its actions. It argues that NATO overstepped the UN mandate by supporting the rebels and demanding regime change. Henceforth, proper implementation of R2P requires the establishment of greater accountability mechanisms for those undertaking military interventions to ensure that they follow the mandate specified under the doctrine. Third, it explores NATO's post-intervention role and its subsequent departure without fulfilling its 'Responsibility to Rebuild' (R2R) in Libya. It further advocates that the intervening actors cannot ignore the R2R aspect of R2P as specified in the ICISS report. Fourth, the thesis analyses the initiatives taken by the international community after R2P's implementation in Libya and examines if they have really learnt their lessons from the military intervention in 2011. The paper concludes by stating that even though some important developments emerged as a consequence of the Libyan intervention, the international community has not learnt their lessons regarding R2P's proper implementation for humanitarian protection missions. The use of force in global politics can sometimes be necessary and hence, future military interventions for humanitarian protection must be based on the criteria provided by the Just War Theory (as highlighted in the original ICISS report), which will strengthen and legitimise R2P's current framework.

Chapter I: The Problem of Decision Making

In 2011, political protests flared up in different parts of the country demanding democratic reforms and the removal of the Libyan strongman Muammar al-Gaddafi, following closely upon the political upheavals associated with the 'Arab Spring'. However, unlike in other regions, the protests in Libya that initially began as peaceful anti-government demonstrations quickly escalated into an armed conflict-partly because of Gaddafi's decision to suppress the uprising through brutal means and partly because of the rapid consolidation of an armed opposition group, the Interim National Transitional Council (NTC).¹⁹ The threat to civilians from Gaddafi's regime became explicit through his speeches in which he urged his supporters to attack the "cockroaches"²⁰ protesting against his rule. He vowed to exterminate anyone who posed a danger to the unity of his state and declared that he would "cleanse Libya house by house".²¹ In order to stay in power, the Libyan leader further made clear his intent to commit grave human rights violations by announcing that his forces would show "no mercy" towards the protestors.²²

¹⁹ Alex J. Bellamy and Paul D. Williams, "The new politics of protection? Côte d'Ivoire, Libya and the responsibility to protect," *International Affairs* 87, no. 4 (2011): 838.

²⁰ BBC News, "Libya protests: Defiant Gaddafi refuses to quit," February 22, 2011, , accessed August 4, 2017, <http://www.bbc.com/news/world-middle-east-12544624>.

²¹ *ibid.*

²² CBS News, "Qaddafi vows "no mercy" as U.N. eyes action", March 17, 2011, accessed August 4, 2017, <https://www.cbsnews.com/news/qaddafi-vows-no-mercy-as-un-eyes-action/>.

The course of the Libyan Intervention

In the wake of Gaddafi's brutal crackdown against innocent civilians, the international community and several regional and sub-regional bodies realised that urgent action was needed to curb the activities of the Libyan government. On the 22nd of February, the UN High Commissioner for Human Rights, Navi Pillay, called upon the Libyan authorities to stop their violent attacks against protestors, which "may amount to crimes against humanity".²³ Upon investigating the situation in Libya, the Human Rights Council recommended suspending Libya's membership from the council and stressed the international community's responsibility to undertake an ameliorative action to provide humanitarian protection to the innocent civilians. Furthermore, the unpopularity of Gaddafi's regime in the Arab World motivated key regional organisations such as the Arab League, the Gulf Cooperation Council (GCC), and the Organization of the Islamic Conference (OIC) to denounce the violence in Libya and subsequently suspend Libya's membership from their respective organisations.²⁴

The international community's condemnation of Gaddafi's actions and the robust stance adopted by these regional organisations set the stage for the UNSC's discussions on the Libyan situation. On the 25th of February 2011, the UNSC acted with unusual speed by unanimously adopting Resolution

²³ Alex J. Bellamy, "Libya and the Responsibility to Protect: The Exception and the Norm," *Ethics & International Affairs* 25, no. 03 (2011): 264.

²⁴ Andrew Garwood-Gowers, "The Responsibility to Protect and the Arab Spring: Libya as the Exception, Syria as the Norm?" *UNSW Law Journal* 36, no. 2 (2013): 608.

1970, that referred to “widespread and systematic attacks... against the civilian population”²⁵ and reminded Libya of its “responsibility to protect its population.”²⁶ The resolution further imposed sanctions, arms embargo, travel bans and referred the matter to the International Criminal Court (ICC).²⁷ Despite the Council’s adoption of Resolution 1970, the Gaddafi regime did not cease its hostile actions and the violence between the armed opposition and the security forces continued to escalate.

The deteriorating situation in Libya made the regional organisations even more vocal in their approach. Condemning the state-sponsored violence, the GCC called upon the UNSC to “take all necessary measures to protect civilians, including enforcing a no-fly zone over Libya”.²⁸ A similar position was echoed by the OIC as it endorsed the creation of a no-fly zone over Libya although, it explicitly debarred foreign military operations on the ground.²⁹ In a dramatic turn of events, even the Arab League declared that the Gaddafi regime had lost all legitimacy and encouraged the UNSC members to “immediately impose a no-fly zone over the Libyan aviation, to provide the Libyan people with urgent, continuing support and, necessary protection from the serious violations and grave humanitarian crimes committed by the Libyan authorities.”³⁰

²⁵ United Nations Security Council, Resolution 1970, UN Doc S/RES/1970, 26th February 2011.

²⁶ *ibid.*

²⁷ *ibid.*

²⁸ Alex J. Bellamy and Paul D. Williams, “The new politics of protection? Côte d’Ivoire, Libya and the responsibility to protect,” *International Affairs* 87, no. 4 (2011): 841.

²⁹ *ibid.*

³⁰ *ibid.*

Following the discussions on the Libyan crisis and the 'gatekeeping'³¹ role played by the regional organisations, the UNSC invoked R2P and passed Resolution 1973 on the 17th of March 2011.³² The resolution was approved with ten votes in favour and five abstentions from Brazil, Russia, India, China (BRIC) and Germany.³³ The representatives of BRIC and Germany were forthright in expressing their hostility to any sort of direct external involvement in the domestic affairs of Libya. While China and Russia stressed the need to resolve the Libyan crisis through peaceful means, the remaining countries were rather suspicious of NATO's intentions due to the lack of clarity about the enforcement measures specified under Resolution 1973. Nonetheless, despite their objections, the BRIC members and Germany abstained from the resolution as they feared that blocking a resolution would attract significant criticism given the immediacy and gravity of threats to Libyan civilians, and they believed that they could not legitimize inaction in the face of mass atrocities.³⁴ Ultimately, the adoption of Resolution 1973 led to establishment of a 'no-fly zone' and authorised the member states to take 'all necessary measures' to protect the civilians of Libya.³⁵ Within a few days after the resolution was passed, a coalition of states under NATO's control began military air operations against Libyan targets.

³¹ *ibid.*

³² United Nations Security Council, Resolution 1973, UN Doc S/RES/1973, 17th March 2011.

³³ *ibid.*

³⁴ Alex J. Bellamy, "Libya and the Responsibility to Protect: The Exception and the Norm," *Ethics & International Affairs* 25, no. 03 (2011): 267.

³⁵ United Nations Security Council, Resolution 1973, UN Doc S/RES/1973, 17th March 2011.

Resolution 1973 was lauded by many supporters of R2P as a significant step towards the consolidation of the doctrine's normative standing.³⁶ The U.S. Ambassador to the UN, Susan Rice, hailed the swiftness of the UNSC's action by stating: "I can't remember a time in recent memory when the Council has acted so swiftly, so decisively, and in unanimity on an urgent matter of international human rights."³⁷ In a similar vein, Nuruzzaman also hailed the decision to authorise military intervention by asserting that the UNSC's quick response to the Libyan crisis surprised many people primarily because, for an unexpectedly long time, human sufferings in Bahrain, Syria and Yemen continued to be ignored.³⁸ For the then UN Secretary General, Ban Ki- moon, Resolution 1973 clearly and unequivocally affirmed "the international community's determination to fulfil its responsibility to protect civilians from violence perpetrated upon them by their own government."³⁹ According to Bellamy and Williams, the Libyan situation served as an unparalleled juncture in the history of the UNSC and the passing of Resolution 1973 by the Council members showed that "they would not be inhibited as a matter of principle from authorizing enforcement for humanitarian protection purposes even in the absence of

³⁶ Jocelyn Vaughn and Tim Dunne, "Leading from the front: America, Libya and the localisation of R2P," *Cooperation and Conflict* 50, no. 1 (2014): 18.

³⁷ U.S. Mission to the United Nations, 'Remarks by Ambassador Susan E. Rice, U.S. Permanent Representative to the United Nations, at the Security Council Stakeout, on Resolution 1970, Libya Sanctions', 26 February 2011, <http://usun.state.gov/remarks/4983>, as quoted in Nathalie Tocci, "On Power and Norms: Libya, Syria and the Responsibility to Protect," *Global Responsibility to Protect* 8, no. 1 (2016): 54.

³⁸ Mohammed Nuruzzaman, "The "Responsibility to Protect" Doctrine: Revived in Libya, Buried in Syria," *Insight Turkey* 15, no. 2 (2013):63.

³⁹United Nations Secretary-General, 'Secretary-General Says Security Council Action on Libya Affirms International Community's Determination to Protect Civilians from Own Government's Violence', 18 March 2011. Available at: <http://www.un.org/press/en/2011/sgsm13454.doc.htm>, as quoted by Christopher Hobson, "Responding to Failure: The Responsibility to Protect after Libya," *Millennium: Journal of International Studies* 44, no. 3 (2016): 443.

host state consent.”⁴⁰ Likewise, Chris Keeler described the UNSC’s resolutions in Libya as a model for the future implementation of the R2P doctrine.⁴¹

The problematic decision making process

These optimistic prognoses surrounding Resolution 1973 were soon overshadowed by scholarly critiques of the rushed decision making process undertaken by the Council members. In his analysis, Hobson emphasized that the UNSC acted with extraordinary speed in authorizing military intervention during the Libyan crisis, which left limited space for the skeptics to challenge the context of the resolution.⁴² Moreover, the speed and haste espoused by the Council members led to defied expectations and judgements of the actual situation, and resulted in the transmogrification of an intervention - which was meant to stop an immanent humanitarian crisis - into something much more “expansive and consequential.”⁴³ By acknowledging that the time frame to act in Libya was exceptionally short as none of the various risk-assessment frameworks mentioned the country posing any threat of mass atrocities, Bellamy argues that R2P’s implementation in Libya highlighted the problems of the UNSC’s quick and urgent decision making. He accentuated that “such late-in-the day

⁴⁰ Alex J. Bellamy and Paul D. Williams, "The new politics of protection? Côte d'Ivoire, Libya and the responsibility to protect," *International Affairs* 87, no. 4 (2011): 825.

⁴¹ Christopher Keeler, "The End of the Responsibility to Protect?" *Foreign Policy Journal*, 2011.

⁴² Christopher Hobson, "Responding to Failure: The Responsibility to Protect after Libya," *Millennium: Journal of International Studies* 44, no. 3, (2013):443.

⁴³ *ibid.*

decisions about military intervention to prevent atrocities as carried out in Libya, will always be embedded with a deep uncertainty about their effects and will be driven by the specific political context.”⁴⁴ According to Odeyemi, the speed with which the P3 (France, UK, US) authorised the use of military force as a means to resolve the Libyan crisis through Resolution 1973, raised serious concerns among non-western countries, particularly the BRICS, who began to question the motives of the coalition.⁴⁵ Combined, these arguments suggest that the swiftness of the UNSC’s decision to intervene in Libya hindered an accurate decision making process; narrowed the members’ ability to comprehend the complex realities of the situation and reflect on their own mental or physical limitations to predict certain consequences. In sum, the decision to use force under the name of humanitarian protection requires a more careful and cautious reckoning, one which enables external actors to take into consideration the possible consequences of their actions. As strongly suggested by the Libyan case, the failure to develop this approach can have very real and devastating consequences for people in mass atrocity situations.

A second line of criticism has been raised by those who directly challenge the existing practices of the UNSC’s decision making process that allowed the P3 members to push for a hard solution to the Libyan crisis. A practice

⁴⁴ Alex J. Bellamy, "Libya and the Responsibility to Protect: The Exception and the Norm," *Ethics & International Affairs* 25, no. 03 (2011): 269.

⁴⁵ Christo Odeyemi, "R2P intervention, BRICS countries, and the no-fly zone measure in Libya," *Cogent Social Sciences* 2, no. 1 (2016): 13.

that has come under increasing reproof is the informal 'pen-holding' role adopted by a few powerful countries through which they take upon themselves the responsibility to frame a particular issue, draft resolutions and carve out a future course of action before consulting others. The UK quickly imposed itself as the "lead country" or the "pen-holder" as far as matters on Libya were concerned and devised resolutions according to their competence.⁴⁶ As a result, the UN resolutions on Libya were mostly an outcome of informal consultations between British and French diplomats. Only once the draft was approved by London and Paris did it get passed on to the American and non-permanent European members of the Council (Germany and Portugal). After the US approved the draft it was shared with the other P5 members (China and Russia) and then, finally, with the rest of the Council members. Ultimately, the other members would just fine-tune the British Draft, without making any major changes that might have seemed necessary.⁴⁷

Through its 'pen-holding' role the UK managed to twist UN procedures to their advantage in order to garner support for the intervention in Libya. As Adler-Nissen and Vincent Pouliot explain, the competence of the British diplomats allowed them to exploit the defection of Libyan Deputy Permanent Representative Ibrahim Dabbashi; table the draft resolutions early; and accelerate the negotiation process to avoid the formulation of

⁴⁶ Rebecca Adler-Nissen and Vincent Pouliot, "Power in practice: Negotiating the international intervention in Libya," *European Journal of International Relations* 20, no. 4 (2014): 898.

⁴⁷ *ibid.*

counter blocs.⁴⁸ Furthermore, the British diplomats sought to establish their moral authority through “press harassment” and “media leakages”, which were designed to pressurise the apprehensive states to move away from their resistant positions and instead, provide a smooth passage for the authorisation of military intervention in Libya. It was due to this ‘mastery of the UN procedures’ that the P3 were able to persuade South Africa to vote in favour of Resolution 1973 and disarm its opponents - Russia and China.⁴⁹ The pressure imposed by the P3 members to act in Libya impeded the Council’s careful consideration of whether military intervention was really the most appropriate course of action or whether other options were perhaps more advisable. In addition, the dominant position of the P3 members restricted the Council’s ability to develop a practical solution for humanitarian protection in Libya and caused them to overlook the repeated offers for peaceful negotiation proposed by different agencies (as discussed in chapter II).

The influence exercised by the UK and France further allowed them to limit the level of input that non-P3 members could have in the negotiation process regarding Resolution 1973 and led to the marginalization of the remaining elected members of the Council. This inconsistency of the UNSC’s decision making process has been underlined by Ralph and Gifkins, who argue that the decision to intervene in Libya was a result of “weak and unsustainable consensus, and symptomatic of the exclusionary

⁴⁸ *ibid.*

⁴⁹ *ibid* p.891.

hierarchies that are deeply ingrained within the UNSC practices.”⁵⁰ Developing this argument, they state that the P3-dominated ‘pen-holding’ practice exacerbates the difficulties of formulating a collective approach to decision making which, in turn, has very real implications for the UNSC’s response to humanitarian crisis situations. Ralph and Gifkins emphasize that the proper implementation of R2P requires policy makers operating under the new normative environment “to align what they see as the most feasible response to mass atrocity with the need to construct and sustain a collective cosmopolitan consciousness that underpins the core ethic of protection.”⁵¹ As they explain, a collective consciousness for protection purposes and the full involvement of other Council members in the negotiation process can possibly limit the ability of the P3 to pursue their own goals, and shift the focus towards the protection of civilians.

In accordance with these criticisms, this chapter suggests that the fundamental problem associated with R2P’s implementation in Libya was not so much about the quick decision making but the poor decision making and the power politics of the UNSC. The P3 members exploited their power to push for the adoption of Resolution 1973 however, their decisions were based on inadequate information and fell short of a proper counterfactual analysis. Libya lacked the structural conditions necessary to transition to democracy; rebel forces were not united; and there were

⁵⁰ Jason Ralph and Jess Gifkins, "The purpose of United Nations Security Council practice: Contesting competence claims in the normative context created by the Responsibility to Protect," *European Journal of International Relations* 23, no. 3 (2017): 643.

⁵¹ *ibid* p. 632.

considerable dangers involved in removing Gaddafi.⁵² As mentioned elsewhere, the global risk-assessment framework failed to report the country as committing grave human rights violations and hence, from the onset of the crisis, the Council lacked sufficient knowledge about the situation in Libya. In one of the procedural discussions about the Libyan problem, Secretary General Ban Ki-moon “stressed on the accounts provided by the press, human rights groups, and civilians that included allegations of indiscriminate force, arbitrary arrests, targeting of peaceful protesters, detention and torture of members that belonged to the opposition group, and the use of foreign fighters.”⁵³ But he also added that though these reports seem to be credible and consistent, “there was a lack of conclusive proof.”⁵⁴ This statement demonstrates his uncertainty and hesitation in sanctioning military intervention in the light of deficient information about the local Libyan context. It further reveals the lack of investigations that went into the P3-dominated decision making process. Although the matter was referred to the ICC, which claimed that mass humanitarian atrocities were being conducted by the Gaddafi regime against innocent civilians, the policy makers lacked adequate understanding of the social and political dynamics that governed Libya.

⁵²Christopher Hobson, "Responding to Failure: The Responsibility to Protect after Libya," *Millennium: Journal of International Studies* 44, no. 3 (2016): 450.

⁵³Jeffrey Bachman, "R2P's "Ulterior Motive Exemption" and the Failure to Protect in Libya," *Politics and Governance* 3, no. 4 (2015):58.

⁵⁴United Nations, Security Council. Peace and security in Africa, S/PV.6490, 2011. Retrieved from http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.6490, as quoted in, Jeffrey Bachman, "R2P's "Ulterior Motive Exemption" and the Failure to Protect in Libya," *Politics and Governance* 3, no. 4 (2015):58.23

The Council failed to take into consideration the nature of the Jamahiriya and the complex system of governance that Gaddafi had built. During his 42 years in power, Gaddafi developed his own political philosophy that was based on absolute intolerance of defiant and nonconformist opinions and the eradication of any vestiges of constitutionality, civil society rights, and authentic political participation. With absolutely no or minimal rights for the ordinary Libyan masses, Gaddafi's power structure was based on an ultra-hierarchical pyramid where Gaddafi's family and close allies were placed at the top. Their authority, defended by a brutal security apparatus, often went unchecked and invariably uncontested. As Gaddafi's authoritarian rule endured for over four decades, Libyan society was unable to develop democratic political structures or institutions which would allow the country to transition into a democratic state. In addition, the advocates of war also fell short of understanding the societal divisions that were ensuing in Libya. The absence of a clear distinction between the state and the regime frustrated the army and security personnel belonging to the Gaddafi regime, and made it difficult for them to stay neutral during the rebellion. This resulted in the defection of several regime military members to join the rebel forces and rebellion brigades that were largely composed of civilians such as teachers, students, workers, and lawyers - all revolting for their own individual interests. At the same time, fragmentations also occurred along tribal and regional lines. Even the NTC, which was recognised as the de facto government of Libya by the

international community, failed to emerge as a unified front and lacked a coherent political vision.

In light of these divisions and the lack of democratic structures within Libyan society, the collapse of the Gaddafi regime clearly came with the risk of precipitating a political vacuum in which competing factions would jostle for power and supremacy.⁵⁵ Based upon these evidences one can argue that developing a collective approach on Libya and discussing the matter more openly with other non-permanent members of the Council would have led to the dissemination of information about the crisis; assisted the P3's capability to develop alternative strategies to resolve the problem; and enabled them to better predict the outcome of their actions. The significance of information sharing has recently been acknowledged by the UN Security Council in its report, "Can the Security Council Prevent Conflict", which notes that "the ability of the Council to receive frank and timely analysis and information is critical to its effective engagement on conflict prevention, mediation, management and resolution."⁵⁶

The fallout from the Libyan intervention clearly indicates that the policy makers did in fact act hastily and with a lack of information. However, for the future implementation of R2P, it is important to understand the

⁵⁵ International Crisis Group, "A Ceasefire and Negotiations: The Right Way to Resolve the Libya Crisis," March 10, 2011, , <https://www.crisisgroup.org/middle-east-north-africa/north-africa/libya/ceasefire-and-negotiations-right-way-resolve-libya-crisis>.

⁵⁶ United Nations Security Council, " Research Report: Can the Security Council Prevent Conflict", no. 1, (9th February 2011):11.

challenges they might have faced. The deliberations of policy makers regarding a response to the Libyan crisis were informed, on the one hand, by the horrors of past failures such as Rwanda 1994 and Srebrenica 1995 and, on the other hand, by the rapidly deteriorating situation in Libya where civilians were being slaughtered on a large scale.⁵⁷ The pressure of past failures and the present need to act, added to the sense of urgency that shaped the deliberations.

To conclude, the major lesson that can be drawn from this analysis is that there are no easy or quick solutions to deal with such complex crises. While the norm has successfully cultivated the habit among the international community to respond to mass atrocity situations, the UNSC's decision making process to implement R2P remains flawed. Unlike, Ralph and Gifkins⁵⁸; Adler-Nissan and Pouliot⁵⁹; and Hobson⁶⁰ who lay great emphasis on the underlying impulse to protect civilians that reflects changing international norms around humanitarian protection and provide alternative suggestions to implement R2P, this chapter suggests that a shift in the existing UNSC practices can bring about a substantive change in the way the international community responds to atrocity situations. The proper implementation of the R2P doctrine

⁵⁷ Christopher Hobson, "Responding to Failure: The Responsibility to Protect after Libya," *Millennium: Journal of International Studies* 44, no. 3 (2016): 446.

⁵⁸ 'Competence for humanitarian Protection' Jason Ralph and Jess Gifkins, "The purpose of United Nations Security Council practice: Contesting competence claims in the normative context created by the Responsibility to Protect," *European Journal of International Relations* 23, no. 3 (2017): 910.

⁵⁹ "A practice which equates diplomatic competence with the exercise of practical judgment that harmonizes a plurality of normative commitments", as quoted in Rebecca Adler-Nissen and Vincent Pouliot, "Power in practice: Negotiating the international intervention in Libya," *European Journal of International Relations* 20, no. 4 (2014): 11.

⁶⁰ 'Humble approach' as described in Christopher Hobson, "Responding to Failure: The Responsibility to Protect after Libya," *Millennium: Journal of International Studies* 44, no. 3 (2016): 453.

therefore requires the establishment of better practices that will enable a collective approach for humanitarian protection. However, this will only be possible if the actions of the P3 members are critically scrutinised and the non-P3 members are fully involved in the deliberations over humanitarian protection. The P3 members need to step away from their dominant positions and formulate their decisions with the sole aim of protecting vulnerable populations. Humanitarian protection and only humanitarian protection should be the starting point of their analysis prior to authorising coercive intervention. This suggestion directly resonates with the *jus ad bellum* principle of the just war tradition, which renders that the belligerent states must have a just cause for combating coercive actions. In addition, there is also a need to develop effective early warning mechanisms within the UNSC with three main components: dissemination to information, the capability to undertake comprehensive analysis, and a communication channel to decision makers capable of authorising effective measures.

Chapter II: NATO overstepping the UN mandate

After the initial stages of NATO's military intervention in Libya, a new political controversy emerged among the UN members concerning the interpretation and implementation of R2P. The NATO coalition was widely criticized for what some states perceived as an overly expansive interpretation of Resolution 1973 since the intervening forces pursued a strategy of regime change by arming the rebels and attacking a broad range of targets beyond those necessary for the protection of civilians.⁶¹ In the context of these discussions, this chapter aims to analyze the way NATO comprehended and applied the 'military dimension' of R2P for humanitarian protection purposes in Libya. But before proceeding further, the important question is why would the powerful P3 call for regime change in a small country like Libya? According to the understanding of realist commentators, the NATO forces pursued these actions due to the potential "geo-political, economic and electoral advantages accruing to and within intervening member states."⁶² With a population of 6.4 million and a territory of mostly empty desert, "Libya has taken on an outsized importance because of its geographic location, as it sits atop the strategic intersection of the Mediterranean, African and Arab worlds."⁶³ Therefore, control over Libya has always been an effective way to project power in

⁶¹ Andrew Garwood-Gowers, "The Responsibility to Protect and the Arab Spring: Libya as the exception, Syria as the Norm?," *UNSW Law Journal* 36, no. 2 (July 2013): 609.

⁶² Christopher Fermor, "NATO's decision to intervene in Libya (2011): Realist principles or humanitarian norms?" *Journal of Politics & International Studies* 8 (2013): 323.

⁶³ Jason Pack, "Libya Is Too Big to Fail," *Foreign Policy*, March 18, 2011, accessed August 28, 2017, <http://foreignpolicy.com/2011/03/18/libya-is-too-big-to-fail/>.

these places.⁶⁴ Secondly, the country is hydrocarbon rich figuring in the top ten of world oil reserves and it additionally enjoys significant exploitable reserves of natural gas.⁶⁵ The removal of Gaddafi from power, the West concluded, “would open up Libya as a huge market for oil and investments.”⁶⁶ Lastly, Gaddafi’s regional unpopularity and NATO’s willingness to sustain its relationship with Arab and African leaders made Gaddafi’s removal a priority.

NATO’s intentions behind the Libyan intervention

The debate about where the political and strategic motive of regime change fits among NATO’s early set of priorities still remains unresolved, however, the fact that R2P became a tool for bringing about regime change in Libya does not. There is ample evidence proving that even if the predominant intention behind NATO’s military intervention in Libya was to protect civilians, gradually its aim evolved to overthrow the Gaddafi regime. This view has been supported by Zifcak, who claims that the NATO strategy “morphed progressively” into one that embraced regime change.⁶⁷ In fact, after repeatedly rejecting the idea that the Libyan intervention should embrace regime change, witnessing the mass humanitarian atrocities

⁶⁴ibid.

⁶⁵ “Proven natural gas reserves in 2006 were estimated to be 1.42 billion cubic meters, the third largest in Africa, and some experts suggested unexplored reserves could double that figure (World Bank 2006: 13)”, as quoted in Christopher Fermor, “NATO’s decision to intervene in Libya (2011): Realist principles or humanitarian norms?” *Journal of Politics & International Studies* 8 (2013): 11.

⁶⁶ Mohammed Nuruzzaman, “The “Responsibility to Protect” Doctrine: Revived in Libya, Buried in Syria,” *Insight Turkey* 15, no. 2 (2013): 63.

⁶⁷ Spencer Zifcak, “The Responsibility to Protect after Libya and Syria,” *Melbourne Journal of International Law* 13 (2012): 66.

carried out by the Gaddafi government, President Obama later enunciated the altered objective, saying that, “Gaddafi’s belligerence posed an ongoing threat to citizens throughout the rest of Libya and the long term stability of Libya required his removal.”⁶⁸ Similar views were upheld by the leaders of France and Great Britain. In a joint statement, President Barak Obama, Prime Minister David Cameron, and President Nicolas Sarkozy committed to pursue coercive action in Libya until the Colonel was removed.⁶⁹ They further remarked that “it was impossible to imagine a future of Libya with Gaddafi in power and hence, Gaddafi must go and go for good.”⁷⁰ In doing so, they also acknowledged the restrictions imposed by the UN mandate as they clearly stated, “our duty and our mandate under the Resolution 1973 is to protect civilians, and we are doing that.”⁷¹ This statement signifies that the NATO members respected the principles of R2P, however, they saw regime change to be the only and the best option to resolve the crisis. Moreover, the policy makers were confronted with severe challenges as described in Chapter I (failures to act in the past and mass atrocities in Libya) that led to the hard choice of first using coercion and then bringing about regime change in Libya. This does not necessarily mean that the NATO members invoked R2P in Libya as a ‘self-serving military

⁶⁸ John Western and Joshua S. Goldstein, “R2P After Syria,” *Foreign Affairs*, 2013. See also The White House, “President Obama’s Speech on Libya,” news release, March 28, 2011, accessed September 2, 2017, <https://www.youtube.com/watch?v=cVW6jBbD5Q8>.

⁶⁹ Allegra Startton, “Obama, Cameron and Sarkozy: no let-up in Libya until Gaddafi departs,” *The Guardian*, April 15, 2011, accessed September 5, 2017, <https://www.theguardian.com/world/2011/apr/15/obama-sarkozy-cameron-libya>.

⁷⁰ President Obama, David Cameron, and Nicolas Sarkozy, “Libya’s Pathway to Peace,” *The New York Times*, April 14, 2011, accessed September 5, 2017, <http://www.nytimes.com/2011/04/15/opinion/15iht-edlibya15.html?mcubz=0&module=ArrowsNav&contentCollection=Opinion&action=keypress@ion=FixedLeft&pgtype=article>.

⁷¹ *ibid.*

adventure'⁷² or in pursuit of their Western imperialistic policy. However, their demand for regime change and subsequent actions thereafter, raised suspicion among many that the doctrine could be abused for political purposes.

Bachman, in his analysis, demonstrated resistance to the authorization of coercive action in conflict prone areas if the intervening states have motives other than those of humanitarian protection.⁷³ According to him, NATO was able to demand regime change in Libya due to “ulterior motive exemption” of actors specified in the R2P doctrine. It is the utilisation of vague language in the principles of R2P that allows the intervening states to have motives other than civilian protection influencing their participation in an intervention, which he refers to as the “ulterior motive exemption”.⁷⁴ While he directly challenges the framework of R2P, it is essential to understand that the problem in Libya was not principally about the intentions of the NATO members that led to the invocation of R2P or even with the structure of the doctrine, but it was the way NATO conducted its operations (as examined in the following paragraphs), which ultimately served as major setback for the doctrine.

⁷² Elizabeth O'Shea, "Responsibility to Protect (R2P) in Libya: Ghosts of the Past Haunting the Future *," *International Human Rights Law Review* 1, no. 1 (2012): 190.

⁷³ Jeffrey Bachman, "R2P's "Ulterior Motive Exemption" and the Failure to Protect in Libya," *Politics and Governance* 3, no. 4 (2015): 65.

⁷⁴ *ibid.* pg.57.

NATO's disregard of credible diplomatic options and buying time

The aggravation of the crisis and the massive human rights violations carried out by the Gaddafi regime strengthened the NATO coalition's resolve to overthrow the dictator. They became so determined on their stance that once they decided to commence their military operations, they ignored those proposing for a negotiated settlement to the Libyan crisis - particularly the African Union. Moreover, the coalition repeatedly stood in opposition to forging a ceasefire between the Gaddafi regime and the rebels.

Within a few hours of the UNSC's authorization to use 'all necessary measures' in Libya to protect civilians against mass atrocity crimes, the authoritarian leader became desperate to sustain his dictatorship. As a result, the Libyan government proclaimed their acceptance of the UN demands for a negotiated solution to the crisis and declared an immediate unilateral ceasefire as an attempt to crush the anti-Gaddafi revolt.⁷⁵ However, the NATO leaders believed that offers put forward by Gaddafi were merely to avoid international air strikes and thus, refused to accept his ceasefire proposal. Then in April 2011, the African Union (AU) initiated a reconciliation process, which involved a ceasefire and negotiation for

⁷⁵ Peter Goodspeed, "Peter Goodspeed: Gaddafi's 'ceasefire' aims to avoid air strikes," *National Post*, March 18, 2011, accessed September 10, 2017, <http://nationalpost.com/opinion/peter-goodspeed-gaddafis-ceasefire-aims-to-avoid-air-strikes>.

Libya's better future. The plan "included the delivery of humanitarian aid, the protection of foreign nationals in Libya and dialogue between Libyan parties on the establishment of a transition period towards political reform."⁷⁶ While Gaddafi accepted the AU proposal for a political solution to the deadlocked two-month-old conflict, the rebels rejected the plan believing it to be a scheme to prolong Gaddafi's leadership.⁷⁷ The Obama administration reiterated the assertion of the rebels demanding Gaddafi's departure as a precondition for any political settlement.⁷⁸ Other western powers also dismissed the AU initiative. Another effort was made by the Libyan regime on the 26th of May 2011, which offered not merely a ceasefire, but "negotiations toward a constitutional government and compensation to victims, yet the rebels demurred in favor of war."⁷⁹ The plan was once again greeted with skepticism by the NATO allies.⁸⁰

It was rather difficult for the international to community to endow their trust in the negotiation offers made by the autocratic tyrant who was responsible for the ruthless killing of thousands of innocent civilians. However, these proposals were fully consistent with Resolution 1973 and thus, they should have been taken into consideration by the UNSC

⁷⁶ Harriet Sherwood and Christian McGreal, "Libya: Gaddafi has accepted roadmap to peace, says Zuma," *The Guardian*, April 11, 2011, accessed September 11, 2017, <https://www.theguardian.com/world/2011/apr/10/libya-african-union-gaddafi0-rebels-peace-talks>.

⁷⁷ Barak Barfi, "Can Africa Really Help Libya Find Peace?" *New Republic*, April 13, 2011, accessed September 11, 2017, <https://newrepublic.com/article/86594/libya-nato-african-union-clinton>.

⁷⁸ Leila Fadel, "Libyan rebels reject African Union cease-fire proposal," *The Washington Post*, April 11, 2011, accessed September 11, 2017, https://www.washingtonpost.com/world/gaddafi-accepts-road-map-for-peace-proposed-by-african-leaders/2011/04/10/AFbrtuJD_story.html?utm_term=.64ea37c45c8c.

⁷⁹ Martin Chula, "Libyan regime makes peace offer that sidelines Gaddafi," *The Guardian*, May 27, 2011, accessed September 11, 2017, <https://www.theguardian.com/world/2011/may/26/libyan-ceasefire-offer-sidelines-gaddafi>. See also Alan J. Kuperman, "A Model Humanitarian Intervention? Reassessing NATO's Libya Campaign," *International Security* 38, no. 1 (2013): 115.

⁸⁰ *ibid.*

members during their deliberations over Libya instead of being out-rightly rejected.⁸¹ The ceasefire offers entailed the prospects of initiating a multilateral negotiation process between the regional or sub-regional organizations operating in Libya, the international community and the Gaddafi regime. It also offered an opportunity to alleviate mass humanitarian suffering across Libya. This analysis can be substantiated by Hobson's argument, who states that, "even if negotiations subsequently failed, the pause would have allowed the NATO members to undertake a deeper reflection on the consequences of pushing ahead with military action and considering the full ramification of regime change."⁸² Furthermore, even the principles of R2P suggest appraising the credible diplomatic options prior to authorizing military intervention. The repeated ceasefire proposals revealed Gaddafi's willingness to halt his actions and therefore, served as a good starting point for the NATO members to exploit their capabilities for a peaceful diplomatic solution.

With their tepid response to ceasefire proposals and constant refusal to pursue diplomatic negotiations, the actions of the NATO members were no longer consistent with the humanitarian intent specified in the R2P doctrine. Consequently, allegations of "mission creep"⁸³ began to be raised against NATO's military intervention in Libya.

⁸¹ Jeffrey Bachman, "R2P's "Ulterior Motive Exemption" and the Failure to Protect in Libya," *Politics and Governance* 3, no. 4 (2015): 60.

⁸² Christopher Hobson, "Responding to Failure: The Responsibility to Protect after Libya," *Millennium: Journal of International Studies* 44, no. 3 (2016): 448.

⁸³ James Pattison, "The Ethics of Humanitarian Protection in Libya," *Ethics & International Affairs* 25, no. 3 (2011): 273.

NATO's operational conduct: Assistance to the rebels

The expansion of NATO's objective became evident when they provided preferential support to the rebels. The coalition did not only join the rebels in rejecting multiple ceasefire offers made by the Libyan government but also assisted them with battlefield intelligence, logistics and training support. As an effort to step up international pressure on the Gaddafi regime and to advance their strategy of bringing about regime change in Libya, Western and Arab countries pledged money to the rebels through a new funding mechanism - the Libyan contact group.⁸⁴ In addition, the NATO coalition flouted the terms of the arms embargo specified in Resolution 1970 and 1973 by supplying weapons to the rebels. These financial and weaponry assistance efforts were supplemented by air-strikes that destroyed government telecommunication installations and infrastructure; the headquarters of the Libyan army brigade; and military targets.⁸⁵ In doing so, the NATO led coalition cut all sorts of communication between the government troops, which enabled the rebels to advance further.⁸⁶

The NATO coalition clearly overstepped the remits of the UN mandate by participating on the side of the rebels. First and foremost, the NATO allies were well aware that the rebel forces had allegedly committed acts that

⁸⁴ Joshua Thomas, *Delegitimizing Sultanistic Regimes, One Step at a Time*, Master's thesis, University of Connecticut, 2014, 10.

⁸⁵ Harriet Sherwood, "Libya regime accuses Nato of siding with rebels," *The Guardian*, April 20, 2011, accessed September 11, 2017, <https://www.theguardian.com/world/2011/apr/19/libya-regime-nato-rebels>.

⁸⁶ *ibid.*

constituted war crimes and despite this knowledge they continued to provide the rebels with offensive military support in Libya's civil war.⁸⁷ Considering that both sides, the Gaddafi forces and the rebels, were responsible for mass humanitarian crimes against civilians, the NATO forces should have maintained strict neutrality instead of supporting one side over the other. Secondly, in the absence of the support extended by the western powers, the rebel forces would not have been able to fight or maintain their positions against the government's vastly superior forces for a very long time. Hence, one could assume that sooner or later, they would have agreed to the ceasefire offers and sought a more peaceful solution. These sentiments have been expressed by Prashad, who argues that, "NATO's partisan bombardment allowed the rebels to seize the country faster than they might have had in a more protracted war, but it also allowed them carte blanche to continue with their own crimes against humanity."⁸⁸

NATO's intervention escalated crimes against humanity

The coalition's preferential participation on the side of the rebels and its ruthless attacks on government establishments could be interpreted as an 'act of aggression.'⁸⁹ This is because, the death toll in Libya when NATO

⁸⁷ Sarah Brockmeier, Oliver Stuenkel, and Marcos Tourinho, "The Impact of the Libya Intervention Debates on Norms of Protection," *Global Society* 30, no. 1 (2016): 125.

⁸⁸ Vijay Prashad, "NATO'S Craven Coverup of Its Libyan Bombing," *CounterPunch*, March 15, 2012, accessed September 12, 2017, <https://www.counterpunch.org/2012/03/15/natos-craven-coverup-of-it-libyan-bombing/>. See also, Jeffrey Bachman, "R2P's "Ulterior Motive Exemption" and the Failure to Protect in Libya," *Politics and Governance* 3, no. 4 (2015): 62.

⁸⁹ "which is defined as the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its

intervened was perhaps around 1000-2000 (judging by the UN estimates) and eight months later it rose up to ten times that figure.⁹⁰ As the NATO leaders refused ceasefire and negotiation offers, estimates of the number of dead increased from 10,000 up to 50,000.⁹¹ In late 2011 and early 2012, Human Rights Watch (HRW), Amnesty International, the BBC and The New York Times conducted on the ground investigations of airstrike sites across Libya, which revealed the scores of civilian casualties by NATO bombings. The examination conducted by the New York Times found “credible accounts of dozens of civilians killed by NATO in many distinct attacks. The revelations also state that these figures are not a “complete accounting.”⁹² The Amnesty International report was only able to identify the deaths of 55 people, including 16 children and 14 women as a result of NATO’s bombings in Tripoli and the towns of Zliten, Majer, Sirte and Brega.⁹³ In a similar analysis, the Human Rights Watch discovered a higher death toll and reported that, “the NATO air strikes killed 72 civilians, one-third of them children under the age of 18.”⁹⁴ Although the report acknowledges that “the overall loss of civilian life in NATO airstrikes demonstrates that precautions were generally taken, it also

character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.” in International Criminal Court, “Rome Statue of the International Criminal Court”, 17th July 1998.

⁹⁰ Seumas Milne, "If the Libyan war was about saving lives, it was a catastrophic failure," *The Guardian*, October 27, 2011, accessed September 14, 2017, <https://www.theguardian.com/commentisfree/2011/oct/26/libya-war-saving-lives-catastrophic-failure>.

⁹¹ *ibid.*

⁹² C.J. Chivers and Eric Schmitt, "In Strikes on Libya by NATO, an Unspoken Civilian Toll," *The New York Times*, December 17, 2011, accessed September 11, 2017, <http://www.nytimes.com/2011/12/18/world/africa/scores-of-unintended-casualties-in-nato-war-in-libya.html?mcubz=0>.

⁹³ Amnesty International, *Libya Human Rights Abuses continue as Country descends into Chaos*. May 2015, 1-17. See also: Al-Jazeera, "NATO 'ignoring civilian deaths in Libya'," March 15, 2012, accessed September 13, 2017, <http://www.aljazeera.com/news/africa/2012/05/201251416321904479.html>.

⁹⁴ Human Rights Watch, "Unacknowledged Deaths Civilian Casualties in NATO's Air Campaign in Libya", (United States of America, 2012), 4.

highlights that military interventions cannot be indiscriminate or cause disproportionate civilian loss.”⁹⁵ In its defense, NATO put forward the argument that it only targeted areas with military establishments. However, HRW’s investigations have raised “questions about whether these areas struck were valid military targets at the time of attack.”⁹⁶ The NATO allies failed to acknowledge these causalities or to examine how and why they occurred. Along these lines, severe criticism has been raised by Kuperman who asserts that, “the 2011 intervention and NATO’s subsequent actions, prolonged the war’s duration about sixfold, increased the death toll up to tenfold, worsened human rights abuses and humanitarian suffering, fed Islamic radicalism and led to weapons proliferation in Libya and its neighbours.”⁹⁷

These factual observations strongly suggest that the NATO coalition overstepped its UN mandate and that its military intervention in Libya - under the name of humanitarian protection - proved to be a serious setback for the doctrine of R2P. It further demonstrates Hobson’s contention that good intentions for humanitarian protection might not always lead to just outcomes.⁹⁸ The Libyan case refreshed old disputes regarding the nuances of the use of force to protect populations and raised concerns among scholars who worry that R2P’s foothold is not sufficiently strong to

⁹⁵ *ibid.*

⁹⁶ *ibid* p.6.

⁹⁷ Alan J. Kuperman, "A Model Humanitarian Intervention? Reassessing NATO's Libya Campaign," *International Security* 38, no. 1 (2013):133, as quoted in, Ramesh Thakur, "The Responsibility to Protect at 15," *International Affairs* 92, no. 2 (2016): 425.

⁹⁸ Christopher Hobson, "Responding to Failure: The Responsibility to Protect after Libya," *Millennium: Journal of International Studies* 44, no. 3 (2016): 451.

influence the interests and actions of intervening states. The extensive literature on the debate around R2P's implementation in Libya can be divided into broad groups: the first includes scholars like O'Shea who directly challenge the military dimension specified under pillar III of the R2P doctrine, while the second group includes proponents of R2P such as Thakur and Paris, that remain optimistic about what force can achieve in terms of protection of civilians.

In her analysis, O'Shea proclaims that the interests of the NATO members defined the priorities of their intervention in Libya and therefore, the pursuit of regime change under the auspices of humanitarian intervention verified the age old fear that doctrines such as R2P would always be put to "nefarious use by the powerful".⁹⁹ With the impression that R2P has effectively become a tool for Western interventionism and neo-imperialism, she concludes that, "the application of coercive action to grave humanitarian crisis are tempting, but they rarely solve anything."¹⁰⁰ Therefore, she advocates for policy makers to focus only on peaceful methods to resolve a conflict. However, according to Paris, "if the coercive instruments of R2P are abandoned or rejected, the doctrine would likely be discredited and dismissed as hollow, because there would be no prospect of military action to uphold the principles of human protection,

⁹⁹ Elizabeth O'Shea, "Responsibility to Protect (R2P) in Libya: Ghosts of the Past Haunting the Future", *International Human Rights Law Review* 1, no. 1 (2012), as quoted in Alex J. Bellamy, "The Responsibility to Protect: Added value or hot air?" *Cooperation and Conflict* 48, no. 3 (2013): 11.

¹⁰⁰ Elizabeth O'Shea, "Responsibility to Protect (R2P) in Libya: Ghosts of the Past Haunting the Future", *International Human Rights Law Review* 1, no. 1 (2012): 188.

even in the most extreme crises.”¹⁰¹ In reality, policy makers cannot adopt a passive attitude in light of grave humanitarian situations where peaceful negotiations have failed. This contention has also been acknowledged in the theoretical debates around Just War Theory - “violence is evil, but so is inaction in the face of great injustice.”¹⁰² Thus, the use of coercive action in certain cases can be necessary as it might be the only means to avert an even greater evil of human rights violations. In this way, R2P is “trapped by its own internal logic.”¹⁰³ In a similar vein as O’Shea, Ramesh Thakur also criticizes the military intervention in Libya on the grounds that the NATO-led coalition ‘over-interpreted UN authorization to protect civilians’ in a ‘transparent effort’ to achieve regime change, yet, unlike O’Shea, Thakur does not have a problem with the military dimension of the doctrine and perceives it to be a necessary option but limited to a ‘last resort’.¹⁰⁴ Thakur stresses the need for “establishing legitimacy criteria to guide decisions on authorizing and overseeing international military intervention”¹⁰⁵, which could then serve as a justification for exercising force. Developing on Thakur’s point, as the Just War Tradition laid down certain constraints for states resorting to the use of force- both with regard to the reasons for going to war and the manner in which that war is conducted, military interventions under the name of humanitarian

¹⁰¹Roland Paris, "The 'Responsibility to Protect' and the Structural Problems of Preventive Humanitarian Intervention," *International Peacekeeping* 21, no. 5 (2014): 593.

¹⁰² Nicholas J. Wheeler, "Legitimizing Humanitarian Intervention: Principles and Procedures," *Melbourne Journal of International Law* 2 (2001):554.

¹⁰³ *ibid.*

¹⁰⁴ Ramesh Thakur, "R2P after Libya and Syria: Engaging Emerging Powers," *The Washington Quarterly* 36, no. 2 (2013): 70.

¹⁰⁵ *ibid.* p.61.

protection should also legitimately justify principles of warfare.

The legitimacy criteria were spelled out by the ICISS report in 2001 (although not yet formally adopted by the UNGA or the UNSC) and developed upon the Just War Theory. The first criterion is the presence of *just cause* for military intervention for human protection purposes.¹⁰⁶ The second criterion is that there must be a *right intention*, which means that the predominant motive of the intervening state must be for humanitarian protection, regardless of any other motive they may have.¹⁰⁷ The third criterion is *last resort*, that no lesser measure of peaceful resolution is available or likely to be effective in averting a conflict.¹⁰⁸ The fourth is that any military response be “proportional to the scale of the threat: doing that which is necessary, and no more than that, to deter any future use of chemical weapons.”¹⁰⁹ The final criterion of *legitimacy*, or *prudence*, is the “balance of consequences: that any military response does not put those who are meant to be protected in even greater peril.”¹¹⁰ Although the majority of these criteria were flouted in the Libyan intervention, Evans claims that, “the future moral and prudential case for military action depends on every one of these criteria being satisfied.”¹¹¹ These criteria based on the classical and revisionist approach of just war theory offer a good threshold for the authorization of military intervention and

¹⁰⁶ Gareth Evans, “R2P down but not out after Libya and Syria,” *Open Democracy*, September 9, 2013.

¹⁰⁷ *ibid.*

¹⁰⁸ *ibid.*

¹⁰⁹ Ramesh Thakur, “R2P after Libya and Syria: Engaging Emerging Powers,” *The Washington Quarterly* 36, no. 2 (2013): 70.

¹¹⁰ *ibid.* p.61

¹¹¹ Gareth Evans, “R2P down but not out after Libya and Syria,” *Open Democracy*, September 9, 2013.

combating the use of force for humanitarian protection, and further entail the capacity to legitimize and strengthen R2P's existing framework.

To conclude, the military intervention that was aimed at protecting Libyan civilians transmogrified into something more consequential and expansive primarily due to the de-facto transformation of NATO's intentions, and its methods of implementing R2P. However, the conceptualization around the doctrine of R2P is changing, in part as a result of Libya, but also due to the evident disagreement among the UNSC members about "how the norm is to be applied in the hardest of sharp end cases, those where prevention has manifestly failed, where the harm to civilians being experienced or feared is so great that the issue of military force simply has to be given at least some *prima facie* consideration."¹¹² Henceforth, the essential lesson that can be drawn from the Libyan crisis for the practical implementation of R2P is that firstly, there is an urgent need for the intervening forces to align their strategies in a way that prioritizes the prevention of atrocity crimes over their political or geo-strategic interests. Secondly, it is essential for the UNSC to develop greater accountability mechanisms for those participating in military interventions. These mechanisms are to ensure that prior to authorizing the use of coercive action in a particular situation, the legitimacy criteria (as described above) are satisfied and that at no point during the intervention do the self-interests of the intervening forces come into conflict with the humanitarian objectives. It

¹¹² Cecilia Jacob and Marly-Louise Hickey, *Implementing the Responsibility to Protect: Domestic Processes and Foreign Assistance*, ANU College of Asia & the Pacific, *Australian National University* (2017), 9.

will further provide a system of checks and balances that examines the progress of the intervention and enhances the accountability, transparency, and consistency of the mission. In a similar manner, the mechanism will also ensure that despite authorizing military interventions, negotiation offers put forward by either side involved in a civil war are explored and not instantly shrugged away. Thirdly, a clause for impartiality and neutrality must be introduced in resolutions authorizing military interventions under the R2P doctrine. The following chapter will reveal that by empowering the rebels, the NATO forces unintentionally or unknowingly carved out Libya's future pathway, which left the country embroiled in waves of extremism and violence.

Chapter III-The post-intervention mayhem in Libya

On the 20th of October 2011, the despotic leader Colonel Muammar Gaddafi was dreadfully killed by the forces of NTC, paving the way for NATO's triumph in its seven-month air campaign against Libya. Following his demise, waves of celebrations sparked among Libyans as well as amongst the advocates of military intervention who hailed the mission as successful, signifying a 'textbook case for R2P'.¹¹³ The Prime Minister of the NTC government, Mahmoud Jibril expressed his happiness during a press conference by stating, "we have been waiting for this moment for a long time."¹¹⁴ In his speech, British Prime Minister David Cameron lauded NATO's operation and claimed that "the death of the toppled dictator has provided the Libyan people with a greater chance of building themselves a strong and a better democratic future."¹¹⁵ He was extremely proud of the role played by Britain in liberating the people of Libya.¹¹⁶ President Obama praised Gaddafi's death as a foreign policy success and remarked, "the Libyans had won their revolution and the dark shadow of tyranny has been lifted."¹¹⁷ Even the Secretary of State, Hillary Clinton, boasted about Libya's intervention by enunciating, "We came, we saw, he died."¹¹⁸ With

¹¹³ Ramesh Thakur, "R2P after Libya and Syria: Engaging Emerging Powers," *The Washington Quarterly* 36, no. 2 (2013): 62.

¹¹⁴ James Meikle, "Muammar Gaddafi is dead, says Libyan PM," *The Guardian*, October 21, 2011, accessed September 22, 2017, <https://www.theguardian.com/world/2011/oct/20/gaddafi-dead-says-libyan-pm>.

¹¹⁵ Independent, "Gaddafi death hailed by David Cameron," October 20, 2011, accessed September 22, 2017, <http://www.independent.co.uk/news/uk/politics/gaddafi-death-hailed-by-david-cameron-2373468.html>

¹¹⁶ *ibid.*

¹¹⁷ Ewen MacAskill, "Obama hails death of Muammar Gaddafi as foreign policy success," *The Guardian*, October 21, 2011, accessed September 22, 2017, <https://www.theguardian.com/world/2011/oct/20/obama-hails-death-gaddafi>.

¹¹⁸ Daily Mail Australia, "We came, we saw, he died: What Hillary Clinton told news reporter moments after hearing of Gaddafi's death," October 21, 2011, accessed September 22, 2017,

visible relief, the U.N. Secretary General, Ban Ki-Moon proclaimed that the day of Gaddafi's death marked an "historic transition for the people of Libya."¹¹⁹

With these appraisals and a relatively quick victory, the NATO forces pulled out from Libya in less than two weeks after the killing of the ousted dictator. Although the NTC repeatedly requested that NATO stay for a longer period and provide assistance in the country's democratic transition, the coalition was rather eager to exit.¹²⁰ The NATO leaders emphasised the need to withdraw quickly due to the financial austerities hovering over their countries. In order to deal with the economic crisis, Europe and the US slashed their defence budgets as a part of public spending cuts and thus, upon the completion of their mission they had no reason to stay any further.¹²¹ Hence, even though the initial application of R2P in Libya did much to boost the doctrine's standing, the gains appear to have broken down or reversed, in the handling of the post-conflict transition. In short, the undermining of the overall success of NATO's operation largely accrued from "the failure of the international community to complement military action with robust assistance in critical areas - including disarmament, national reconciliation, and employment

<http://www.dailymail.co.uk/news/article-2051826/We-came-saw-died-What-Hillary-Clinton-told-news-reporter-moments-hearing-Gaddafis-death.html>.

¹¹⁹ Emily Fox, "Colonel Gaddafi is dead," *Express*, October 20, 2011, accessed September 22, 2017, <http://www.express.co.uk/news/uk/278623/Colonel-Gaddafi-is-dead>.

¹²⁰ Seumas Milne, "If the Libyan war was about saving lives, it was a catastrophic failure," *The Guardian*, October 27, 2011, accessed September 14, 2017, <https://www.theguardian.com/commentisfree/2011/oct/26/libya-war-saving-lives-catastrophic-failure>.

¹²¹ Andrew Dorman et al., "The Implications of Military Spending Cuts for NATO's Largest Members," ed. Clara Marina O'Donnell, *Brookings Institution: Analysis Paper*, July 2012, 13.

generation - which collectively constitute the “Responsibility to Rebuild” (R2R).”¹²²

State-Building and R2P

The concept of R2R was specified under the remits of the original ICISS report on R2P, but not included in either the 2005 World Summit Outcome Document or the 2009 UN Secretary General’s Report.¹²³ However, in many respects, the R2R is one of the most important parts of R2P because it requires intervening actors to develop a clear and effective post-intervention strategy. It recommends that the intervening parties should provide security in post-intervention states, promote reconciliation between former rival groupings and assist with economic development.¹²⁴ While it is much easier to generate international consensus around the need to engage in rebuilding after armed conflict than it is to forge consensus on prevention or reaction, the practice of rebuilding nonetheless remains controversial. In academia, there are certain scholars who have questioned whether there is a link at all between the doctrine of R2P and the practice of rebuilding.¹²⁵ This is primarily because, “they believe that considerations of *jus post bellum* do not play any moral role in

¹²² Ethan Chorin, “NATO’s Libya Intervention and the continued case for a “Responsibility to Rebuild”,” *Boston University of International Law* 31, no. 365 (2013): 366.

¹²³ *ibid* p.367, also see United Nations General Assembly, “World Summit Outcome”, A/RES/60/1, 24th October 2005. And United Nations General Assembly, “Implementing Responsibility to Protect: Report of the Secretary-General”, 63rd Session, 12th January 2009.

¹²⁴ Ethan Chorin, “NATO’s Libya Intervention and the continued case for a “Responsibility to Rebuild”,” *Boston University of International Law* 31, no. 365 (2013): 366.

¹²⁵ Alex J. Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, 1st ed. (Cambridge: Polity Press, 2009), 167.

the justifiability of a war.”¹²⁶ But in reality, there is a clear link between assistance for rebuilding institutions, the rule of law, and shattered economies and the strengthening of state sovereignty.¹²⁷ Another set of criticism has been raised by cosmopolitan writers like Daniel Warner¹²⁸ and Mark Duffield¹²⁹ who argue that, “even though the doctrine of R2P recognises the fact that state sovereignty can propagate insecurity, its solution is simply to replace one type of state with another, whilst leaving the principle of state sovereignty intact.”¹³⁰ In response to such arguments, Bellamy asserts that, “this is exactly what R2P advocates - the idea that the best way to protect civilians from genocide and mass atrocities is through an international society of responsible states - and it is only through commitment to rebuilding that the doctrine engages directly with the question of how one builds a world of responsible states.”¹³¹ Developing on Bellamy’s point, the practice of rebuilding strengthens the sovereignty of a state, ensures that it follows the path of development and prevents the re-occurrence of violence, which is fulfilling the commitments of R2P in its true sense. The importance of rebuilding measures have also been highlighted by Ban Ki-Moon in his 2012 report, “The Responsibility to

¹²⁶ James Pattison, "Jus Post Bellum and the Responsibility to Rebuild," *British Journal of Political Science*, 2013, 643.

¹²⁷ Alex J. Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, 1st ed. (Cambridge: Polity Press, 2009), 167.

¹²⁸ Daniel Warner, "The Responsibility to Protect and Irresponsible, Cynical Engagement," *Millennium: Journal of International Studies* 32, no. 1 (2003):110.

¹²⁹ Mark R. Duffield, *Development, security and unending war: governing the world of peoples* (Cambridge: Polity, 2013), 123.

¹³⁰ Daniel Warner, "The Responsibility to Protect and Irresponsible, Cynical Engagement," *Millennium: Journal of International Studies* 32, no. 1 (2003):110. And Mark R. Duffield, *Development, security and unending war: governing the world of peoples* (Cambridge: Polity, 2013), 123, as quoted in Alex J. Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, 1st ed. (Cambridge: Polity Press, 2009), 167.

¹³¹ Alex J. Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, 1st ed. (Cambridge: Polity Press, 2009), 169.

Protect: Timely and Decisive Responsive”, where he explained that R2P might include, “building the institutions, legislation, practices and attitudes to lessen the likelihood of...[atrocities] reoccurrence.”¹³²

The extension of peace operations directed at re-establishing order in conflict prone territories has been widely criticized by Paris who believes that, “international peace-builders have adopted the ‘principles of liberal democracy and market-oriented economics’ in an attempt to transfer the Western liberal-democratic institutions, values and norms to the weak, peripheral countries. In this context, state-building may be seen as a contemporary version of ‘mission civilisatrice’ through which colonial imperial powers sought to ‘civilise’ their former colonies.”¹³³ This involvement of external actors in state building efforts as an adjunct to peacekeeping operations, with embedded liberalism has also been condemned by Ottaway who argues that “external actors do not pay attention to the complex difficulties standing in the way of effective state-building and make promises without being able to fulfil them.”¹³⁴ He further “warns against efforts that are over-ambitious and under-resourced.”¹³⁵ While such concerns are genuine, the risks of not undertaking efforts to rebuild as a part of R2P’s implementation have

¹³² United Nations Security Council and General Assembly, “Report of the Secretary General- Responsibility to protect: timely and decisive response”, A/66/874–S/2012/578, 25th July 2012.

¹³³ Roland Paris, “International peacebuilding and the ‘mission civilisatrice’,” *Review of International Studies* 28, no. 04 (2002): 639. See also, Nouredine Jebnoun, “Beyond the mayhem: debating key dilemmas in Libya’s statebuilding,” *The Journal of North African Studies* 20, no. 5 (2015): 833.

¹³⁴ Marina Ottaway, “Rebuilding State Institutions in Collapsed States,” *Development and Change* 33, no. 5, 2002, as quoted in, Nouredine Jebnoun, “Beyond the mayhem: debating key dilemmas in Libya’s statebuilding,” *The Journal of North African Studies* 20, no. 5 (2015): 834.

¹³⁵ *ibid.*

clearly emerged in Libya. As a result of western powers' neglect of the need for developing or implementing a consensual and inclusive state-building approach, the state has been traumatically absent from post-Gaddafi Libya till today and the country has been engulfed by the myriad of conflicts among different factions.

The new dynamics of Libya

Political Dimension

With the immediate withdrawal of NATO, the control swiftly slipped into the hands of the rebels who began to perpetrate scores of reprisal killings, in addition to torturing, beating, and arbitrarily detaining thousands of suspected Gaddafi followers.¹³⁶ At first, the 51 member NTC commenced preparations for democratic elections in order to form a new government that entailed the responsibility of drafting a resolution and bringing security to the state of Libya. However, these efforts soon came to an abrupt end as the NTC was plagued with internal divisions, which made it unfit to resolve the country's existing problems or address serious issues of national reconciliation and unity. In addition to the NTC's inefficiency, the fallout from Libya unleashed various warring factions, which until then had been marginal or suppressed by the Gaddafi regime. Their sudden

¹³⁶ Maggie Michael, "Rights Group: Libyan Rebels Executed Gaddaa Loyalists," *Washington Post*, October 18, 2012, as quoted in Alan J. Kuperman, "A Model Humanitarian Intervention? Reassessing NATO's Libya Campaign," *International Security* 38, no. 1 (2013): 125.

emergence resulted in competing groups jostling for power along with the large scale proliferation of extremist fighters. Consequently, instead of transitioning into a democracy, the country descended into complete lawlessness.

In the absence of an organised military and government the security situation rapidly deteriorated, with frequent occurrences of violence between rival groups which were heavily armed as they had gained access to the old regime's stockpiles.¹³⁷ The power vacuum left behind now serves as a breeding ground for all sorts of radical factions, from al- Qaeda-affiliated groups to the Islamic State. In fact, these groups promote themselves as the most credible defenders of the country from outside forces. The most evident demonstration of this notion came about as early as September 2012, when Islamist militants "armed with anti-aircraft weapons and rocket-propelled grenades stormed the United States diplomatic mission in Benghazi."¹³⁸ The attack, which killed the American ambassador and three members of his staff, exacerbated the chaos and sparked a firestorm of recrimination in the country.¹³⁹

The only positive development in post-war Libya was the democratic elections of 2012 in which more than 100 political parties registered. The

¹³⁷ Christopher Hobson, "Responding to Failure: The Responsibility to Protect after Libya," *Millennium: Journal of International Studies* 44, no. 3 (2016): 449.

¹³⁸ David D. Kirkpatrick and Steven Lee Myers, "Libya Attack Brings Challenges for U.S.," *The New York Times*, September 12, 2012, accessed September 22, 2017, <http://www.nytimes.com/2012/09/13/world/middleeast/us-envoy-to-libya-is-reported-killed.html?mcubz=0>

¹³⁹ *ibid.*

elections brought to power a moderate, secular coalition government through an interim 200-member national assembly. The main purpose of this new assembly was to replace the unelected NTC, elect a Prime Minister and establish a committee for a draft constitution. After several delays in the voting, the General National Congress finally replaced the NTC on the 8th of August 2012. Nonetheless, amid escalating conflict and increasing regional rivalries, the country's first democratic elections failed to secure a peaceful future for its citizens. This setback was bound to happen as Gaddafi left behind a country with no established or credible governmental institutions or political parties; a dependent civil society; no awareness about individual civil rights; no freedom of expression or justice system; a one-track economy, which was wholly dependent on revenues from oil exports; and a system of national administration that was based on family ties, patronage and corruption.

In the midst of the political mayhem, a second civil war broke out in the summer of 2014 (still on-going) among rival groups seeking control of the Libyan territory. This was partly due to political fragmentation and partly due to the structure of Gaddafi's dictatorship. At the beginning of the civil war, the political scenario of Libya was divided into two main groups, which functioned with their own governments, their own parliaments, and controlled separate fractions of territory and militia. On one side, was the government of the House of Representatives (HoR) elected democratically

in 2014, also recognised as the “Tobruk government” and internationally known as the “Libyan government.” On the other side, was the government endorsed by the General National Congress, which is popularly known as the “National Salvation Government” and is based in the capital, Tripoli. Witnessing the intensification of violence in Libya, the UN brokered peace talks and proposed the establishment of the Government National Accord as Libya’s new unity government in 2016. Although Libya now has three governments, none are able to govern and the country is embroiled in a civil war with ISIS, which continues to expand its operations in different regions. This growing influence of terrorists also poses a direct threat to the very authority of the Libyan state.

Economic Dimension

The disintegration of Gaddafi’s regime and lack of state-building efforts undertaken by the NATO forces has not only fractured Libya’s political dimension but also its economic dimension. A central pillar of Gaddafi’s administration was the redistribution of wealth and oil profits but his demise has precipitated the worst-case economic scenario for the country. New companies such as Exxon Mobile and British Petroleum have been granted hefty oil concessions, and neither of them are interested in carrying out an equitable redistribution of wealth across the Libyan

society.¹⁴⁰ The country's economy and finances are already showing signs of fatigue and rapid decline, as the country's production of oil - its lifeblood - remains severely depressed by the protracted conflict. In December 2016, "Libya's oil output plummeted from 1.4 million barrels per day to only 160,000 barrels per day."¹⁴¹ In addition, due to a weak central government and lack of proper administrative structure, Libya now has an expansive black market network for oil, the sales from which have been skyrocketing.¹⁴² According to a World Bank report, "Libya's economy is near collapse as the civil war worsens and bank reserves plunge."¹⁴³ The report further reveals that Libya's economy has shrunk majorly in the past few years and with oil exports down, the bulk of the country's 6 million-strong population depends on fast-depleting foreign reserves.¹⁴⁴ This has been reaffirmed by the National Oil Corporation (NOC) that claims, "oil sector closures have cumulatively cost over \$100 billion in lost revenues from oil exports since 2013, resulting, according to the Central Bank of Libya, in a fiscal deficit of 56 per cent of GDP for both 2015 and 2016."¹⁴⁵ The Bank's foreign-currency reserves are estimated to have decreased below \$40 billion, compared to \$75 billion in March 2015.¹⁴⁶ Libya's

¹⁴⁰ Garikai Chengu, "Libya: From Africa's Richest State Under Gaddafi, to Failed State After NATO Intervention," *Global Research*, September 14, 2016, accessed August 4, 2017.

¹⁴¹ Eric Blanco Niyitunga, "The Greatest African Leaders: Muammar Gaddafi," *Joburg Post Online*, December 2, 2016, accessed September 28, 2017, <https://www.joburgpost.co.za/2016/12/02/the-greatest-african-leaders-muammar-gaddafi/>.

¹⁴² Garikai Chengu, "Libya: From Africa's Richest State Under Gaddafi, to Failed State After NATO Intervention," *Global Research*, September 14, 2016, accessed August 4, 2017.

¹⁴³ <http://www.businessinsider.com/libyas-economy-collapse-civil-war-2016-10?IR=T>

¹⁴⁴ Chris Stephen, "Libya's economy is on the verge of collapse in the midst of its civil war," *Business Insider*, November 1, 2016, accessed September 2, 2017, <http://www.businessinsider.com/libyas-economy-collapse-civil-war-2016-10?IR=T>.

¹⁴⁵ *ibid.*

¹⁴⁶ Intentional Crisis Group, "Libya: Amid Political Limbo, Time to Rescue the Economy," February 28, 2017, <https://www.crisisgroup.org/middle-east-north-africa/north-africa/libya/libya-amid-political-limbo-time-rescue-economy>.

turbulent political development has dragged its economy along and plunged it more than ever before. The economic glitches that hover around Libya demand a political settlement but with power being contested by three rival governments and a fast-disintegrating administration, any sort of reforms are likely to be unsuccessful. As a matter of fact, as long as oil production, which is the major profit generator of the Libyan economy, is held to ransom to achieve political gains by varying groups, the odds of an economic collapse remain high.¹⁴⁷

Why no strategy for state-building in post-intervention Libya?

In order to analyze why the international community failed to undertake post-intervention state-building measures in Libya, it is important to briefly trace the practical dilemmas associated with the principles of R2R. Firstly, there is no agreed or set definition of state-building and neither do the principles provide a specific framework to implement rebuilding strategies in post-conflict situations. Over a period of time, scholars and policy makers have developed their own interpretation of what state-building entails. According to Fukuyama, state-building refers to the formation of new governmental institutions and strengthening the pre-existing ones.¹⁴⁸ Within the predominant context of state development,

¹⁴⁷ Mohsin Khan and Svetlana Milbert, "Libya: Facing Economic Collapse in 2014," Atlantic Council, January 23, 2014, accessed September 27, 2017, <http://www.atlanticcouncil.org/blogs/menasource/libya-facing-economic-collapse-in-2014>.

¹⁴⁸ Francis Fukuyama, "The Imperative of State Building," *Journal of Democracy* 15, no. 2 (2004): 17, as quoted in Nouredine Jebnoun, "Beyond the mayhem: debating key dilemmas in Libya's statebuilding," *The Journal of North African Studies* 20, no. 5 (2015): 833.

which focuses on economic liberalisation and market based approaches, Fukuyama distinguishes “state-building from ‘good-governance’, in light of the weak and dysfunctional institutions in developing countries.”¹⁴⁹ He considers failing states as a major threat to the international community and therefore, persuades powerful states to build “effective political institutions in weak states as a prerequisite for economic progress and international security.”¹⁵⁰ These sentiments have been echoed by Fritz and Menocal, who believe that state-building implies a more explicit awareness of the political nature of institution-building.¹⁵¹ In simplistic terms, “state-building is about constructing the foundations of the very (government) edifice within which governance ought to operate.”¹⁵² However, scholars like Brahimi believe that the process of state-building entails a close relationship between institutionalisation and democratisation, and they cannot be segregated.¹⁵³ In this sense, rebuilding efforts require “constitution-making, electoral processes, reintegration and national reconciliation and rule of law”.¹⁵⁴ The success of state-building depends on the political institutionalisation of democratic principles and values.¹⁵⁵ The lack of consensus, complexity attached with the concept and absence of any basic structure to guide R2R efforts have made intervening states

¹⁴⁹ *ibid.*

¹⁵⁰ *ibid.*

¹⁵¹ Verena Fritz and Alina Rocha Menocal, “Understanding State-Building from a Political Economy Perspective,” Report for DFID’s Effective and Fragile States Teams: overseas Development Institute, 2007, 4.

¹⁵² *ibid.*

¹⁵³ Lakhdar Brahimi, “State Building in Crisis and Post-Conflict Countries.” 7th Global Forum on Reinventing Government: Building Trust in Government, Vienna, Austria, June 2007, 26-29, as quoted in Nouredine Jebnoun, “Beyond the mayhem: debating key dilemmas in Libya’s statebuilding,” *The Journal of North African Studies* 20, no. 5 (2015): 833.

¹⁵⁴ *ibid.*

¹⁵⁵ *ibid.*

apprehensive to undertake rebuilding efforts. Secondly, the process of rebuilding is a long and costly endeavour, and this serves as a disadvantage in persuading states to provide the necessary resources over a long period of time.¹⁵⁶

The coalition's failure to meet its "Responsibility to Rebuild" in Libya accrues from both the practical dilemmas listed above, although it owes a little more to the second problem. In the contemporary time, the international community has undertaken state-building efforts in war-torn countries like Afghanistan, Iraq, and Kosovo, among many others. But the fact that rebuilding after a military intervention required large expenditures of capital and an undefined time commitment, made it difficult for the NATO members to stay on in Libya and provide developmental assistance.¹⁵⁷ This is primarily because at that time, NATO was overly involved in Afghanistan and Iraq, and thus, it did not possess adequate resources, which would have allowed it to take on a new project of state-building. Moreover, as international supporters lacked consensus around appropriate state-building strategies, they attempted to do far too much in Afghanistan.¹⁵⁸ This over-ambition, extended their time commitment, augmented their investments and made it difficult for them to exit the country. It also created a sense of fear and resistance regarding

¹⁵⁶ Alex J. Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, 1st ed. (Cambridge: Polity Press, 2009), 169.

¹⁵⁷ Ethan Chorin, "NATO's Libya Intervention and the continued case for a "Responsibility to Rebuild", " *Boston University of International Law* 31, no. 365 (2013): 378-379.

¹⁵⁸ William Maley, "Statebuilding in Afghanistan: challenges and pathologies," *Central Asian Survey* 32, no. 3 (2013): 266.

any future state-building efforts, which could transform into a replication of Afghanistan.¹⁵⁹ Moreover, in light of the political turmoil in Afghanistan and Iraq, the NATO leaders did not want to meddle with the internal affairs of another Middle-Eastern country. Consequently, the drafters of Resolution 1973 were most concerned with establishing consensus around the military intervention through air strikes, with no boots on the ground, which limited their engagement and responsibility.

The reactions of the international community to Libya's instability

Libya's rapid decent into chaos raised concerns among the entire international community. The reports of American intelligence agencies offered wide-ranging estimates last year on the number of Islamic State fighters in Libya with some assessments topping 5,000 militants.¹⁶⁰ The head of the Pentagon's African Command, Gen. Thomas D. Waldhauser, stated, "the instability in Libya and North Africa may be the most significant near-term threat to U.S. and allies' interests on the continent."¹⁶¹ Similarly, counter-terrorism officers in the Metropolitan Police are increasingly worried that the "so-called Islamic State's foothold in Libya could become a second springboard, after Syria, for attacks on the

¹⁵⁹ *ibid.*

¹⁶⁰ Eric Schmitt, "ISIS Remains Threat in Libya Despite Defeat in Surt, U.S. Officials Say," *The New York Times*, December 8, 2016, accessed September 1, 2017, <https://www.nytimes.com/2016/12/08/us/politics/libya-isis-sirte.html>.

¹⁶¹ Eric Schmitt, "Warnings of a 'Powder Keg' in Libya as ISIS Regroups," *The New York Times*, March 21, 2017, accessed September 1, 2017, <https://www.nytimes.com/2017/03/21/world/africa/libya-isis.html?mcubz=0&mcubz=0>.

UK and the rest of Europe.”¹⁶² In a draft resolution proposed by the International Contact Group on Libya, the group reiterated its “concern about the increasing terrorist threats in the country and the ever increasing expansion of terrorist groups like Islamic State (IS).”¹⁶³ Furthermore, worried about the volatility and human rights situation in Libya, the Secretary General’s Special Representative cautioned “that the country risked a return to wide-spread conflict.”¹⁶⁴ In an interview with Fox News, President Obama expressed regret over, “failing to prepare for the aftermath of the ousting of the Libyan leader” and described it as the “worst mistake of his presidency.”¹⁶⁵ With these apprehensions and distress about the situation in Libya, there is a widespread recognition that Libya is stuck in a political limbo and there is an urgent need to find a political settlement among groups jostling for power and authority.

The Lesson from Libya

The NATO coalition and the entire international community has acknowledged their failure to provide necessary state-building assistance in order to prevent the reoccurrence of violence in Libya. But the practical dilemmas associated with R2R and the lessons learnt through their

¹⁶² Frank Gardner, "Islamic State foothold in Libya poses threat to Europe," *BBC News*, February 11, 2016, , accessed September 23, 2017, <http://www.bbc.com/news/uk-35533787>.

¹⁶³ The Africa Report, "Libya crisis worries international community," January 29, 2016, accessed September 23, 2017, <http://www.theafricareport.com/North-Africa/libya-crisis-worries-international-community.html>.

¹⁶⁴ United Nations Security Council, 7927th Meeting, "Libya Could Relapse into Conflict, Secretary-General's Special Representative Warns, Citing Volatile Security, Human Rights Situation" SC/12799, April 19, 2017, accessed September 23, 2017, <https://www.un.org/press/en/2017/sc12799.doc.htm>.

¹⁶⁵ BBC News, "President Obama: Libya aftermath 'worst mistake' of presidency," April 11, 2016, accessed September 2, 2017, <http://www.bbc.com/news/world-us-canada-36013703>.

previous state-building efforts have developed a state-building fatigue among the international community, which is now less willing to engage in military intervention because they know that they will have to stay back and provide appropriate assistance. In this sense, R2R might serve as a disincentive for the members to further their engagement in cases of mass atrocities or political mayhem. Therefore, the lesson that can be learnt from Libya is that there is dire need for the international community to formulate state-building strategies, which will allow them to engage in protective intervention, given the limited amount of resources. To provide assistance with resilience-building in conflict affected societies, the international community can undertake a range of measures such as, encouraging dialogue between communities; persuading various rival groups to redistribute power and the resources of the country; controlling hate speech; allowing a gradual pace of economic liberalization; and annually assessing the local dynamics of the country to ensure its progress on the path of peace. These measures do not require a huge amount of resources and can be undertaken by a team of competent, as well as dedicated, members of the international community that are well cognizant of the country's past, its complexities, and its problems.

In a similar manner, the UN (based on the state contributions) could also assume certain responsibilities - firstly, it should ensure that its resources are not completely flushed out due to over-commitments on other projects

and there is a reserve maintained for cases of emergency like Libya. Secondly, state-building efforts could also be assumed by representatives from the UN that can provide guidance regarding the country's election procedure, constitution making, and government formation. These cost-effective measures, which could further help in stabilizing post-conflict situations, include: the presence of a small UN peacekeeping force; the dispatching of a UN political stabilization mission; and small scale civil-military assistance.

To conclude, the problem at present is that R2R articulated in the ICISS report suggests long term engagement for state-building, and lengthy commitments of ground forces and peacekeeping forces. However, this form of R2R has the capability to undermine the doctrine of R2P. But if R2R is approached in the ways suggested above and addresses the immediate problems faced by states in the wake of military interventions, it not only has the potential to strengthen the R2P framework, but also to regain acceptance from member countries that have been reluctant to embrace the doctrine. The R2R should therefore not be ignored by the belligerent states. This importance of rebuilding has also been highlighted by the just post bellum principle of Just War Theory and if incorporated within R2P's present structure it will further provide legitimacy to the doctrine.

Chapter IV- The International Community's response to the lessons learnt in Libya

The Libyan experiment not only wounded R2P but also limited the willingness in much of the global south, particularly among the BRICS countries to support any propositions that effectively, if implicitly recognized the legitimacy of humanitarian protection under certain circumstances. Such mounting apprehensions were bluntly expressed by India's ambassador to the UN - Hardeep Singh Puri, who stated that, "Libya gave R2P a bad name."¹⁶⁶ Even the former UN Secretary-General Kofi Annan, admitted that "the way R2P was used in Libya caused a problem for the concept."¹⁶⁷ The NATO coalition's interpretation and execution of R2P in 2011 has further exacerbated the UNSC's impasse over the appropriate and effective measures for humanitarian protection in Syria. Till today, the recalcitrance of Russia and China has made it impossible for a collective action to be undertaken against Syria. This is in part due to their political and geo-strategic motives - Russia has a long history of ties with the Assad regime - and also in part due to their fear that powerful western countries will use coercive action to pursue their imperialistic policies. As Paris points out, their continuous use of veto to

¹⁶⁶Bolopion, Philippe. "After Libya, the question: To protect or depose?" August 25, 2011. Accessed August 25, 2017. <http://articles.latimes.com/2011/aug/25/opinion/la-oe-bolopion-libya-responsibility-t20110825>, as quoted in John W. Dietrich, "R2P and Intervention after Libya," *Journal of Alternative Perspectives in the Social Sciences* 5, no. 2 (2013): 346.

¹⁶⁷Natalie Nougayrcde, 'Kofi Annan: "Sur la Syrie, aL'vidence, Nous N'avons Pas R6ussi"' [Interview with Kofi Annan: 'on Syria, It's Obvious, We Haven't Succeeded'], as quoted in Andrew Garwood-Gowers, "The Responsibility to Protect and the Arab Spring: Libya as the Exception, Syria as the Norm?" *UNSW Law Journal* 36, no. 2 (2013): 610.

reject even a weak UNSC resolution for civilian protection in Syria, has “prompted some observers to characterize the international deadlock on Syria ‘as payback’ for the Libya intervention. .¹⁶⁸

The controversies of the Libyan intervention have also brought the longstanding limitations of the collective security system to the limelight. For instance, questions have been raised on the inconsistency and selectivity of the Council’s actions, the delegation of the authority to use force, the hierarchical differentiation within the Council and the accountability of its members.¹⁶⁹ Although, an extensive analysis and subsequent arguments for UNSC reform falls beyond the scope of this thesis, it will first briefly place the debate in context and then analyze how the international community incorporated these reforms in their initiatives developed to improve R2P’s normative standing post-Libya.

As originally defined in the UN Charter, composition and decision making procedures of the UNSC have come under widespread criticism ever since its establishment in 1946, even though it remains one of the UN’s major successes as it overcame the essential weakness of the League of Nations, namely lack of authority. A large part of the criticism is due to the

¹⁶⁸ Walter Russell Mead, “The Wilsonian World Order Has Once Again Been Postponed”, *The American Interest website*, 5 Oct. 2011 <http://blogs.the-american-interest.com/wrm/2011/10/05/the-wilsonian-world-order-has-once-again-been-postponed>. See also Stephen M. Walt, “Will Victory in Libya Cause Defeat in Syria?”, *Foreign Policy website*, 6 Feb. 2012 http://walt.foreignpolicy.com/posts/2012/02/06/the_libyan_precedent, as quoted in Roland Paris, “The ‘Responsibility to Protect’ and the Structural Problems of Preventive Humanitarian Intervention,” *International Peacekeeping* 21, no. 5 (2014): 587.

¹⁶⁹ Oliver Stuenkel and Marcos Tourinho, “Regulating intervention: Brazil and the responsibility to protect,” *Conflict, Security & Development* 1, no. 4 (2014): 394.

structure of the Council that many believe is undemocratic especially because it gives considerable authority and privileges to the five most powerful countries of the world. Thus, demands were made to extend the membership of the Council, which would break the traditional hierarchy of the P5 sitting on top of the pyramid and limit their ability to use veto as a tool for protecting their national interests. In recent years, the case for strengthening the UNSC has gained greater momentum, mainly due to the fact that its members are now more actively engaged in dealing with situations of global peace and security. As a result, many advocates of reform have argued that improving the working methods of the UNSC and establishing institutional mechanisms for accountability are as important as the expansion of the Council, and restricting the use of veto power.

These proclamations have been highlighted by Tourinho, Stuenkel, and Brockmeir, who believe that apart from the privileges of veto power of the P5 members, the problem of informal differentiation is at the centre of the UNSC's problematic operating procedures.¹⁷⁰ Inevitably, "the elected members or the non-P5 members are excluded from many informal negotiations where, in practice, many of the important decisions are taken and therefore, they do not share the knowledge of any past agreements."¹⁷¹ According to Henderson, the interpretation of the UN charter powers has led to the development of "a method for 'authorizing' states and coalitions

¹⁷⁰ Marcos Tourinho, Oliver Stuenkel, and Sarah Brockmeier, " "Responsibility while Protecting": Reforming R2P Implementation," *Global Society* 30, no. 1 (2016): 147.

¹⁷¹ *ibid.*

of states to use coercive measures in order to fulfil their responsibility for the maintenance of international peace and security.”¹⁷² Although, over the years, “this method has become embedded into the working practices of the Council, there is a deficit in the accountability of the UNSC members in both its development and utilization of it.”¹⁷³ He further advocates for structural and/or procedural reform that could solve many of the problems associated with the working procedures of the UNSC and rectify, or at least minimize, “the use or abuse of the authorization method, both in terms of transparency and accountability.”¹⁷⁴ As a supporter of the reform, Lehmann also perceives that the UNSC suffers from a major problem where the working methods employed by its members are “highly politicized.”¹⁷⁵ In furtherance to these arguments, over the past few years, the UN member states and civil society actors have continuously put forward their demands for voluntary restraint on the use of the veto power by the P5 members in cases of genocide, crimes against humanity, or large-scale war crimes. These calls for voluntary restraint of the veto in mass atrocity situations have also been made by the UN Secretary General, Deputy Secretary General, High Commissioner for Human Rights and the Special Advisers for Genocide Prevention and the Responsibility to Protect.¹⁷⁶ While these contentions suggest that reform of the UNSC is

¹⁷² Christian Henderson, "Authority without Accountability? The UN Security Council's Authorization Method and Institutional Mechanisms of Accountability," *Journal of Conflict & Security Law* 19, no. 3 (2014): 399.

¹⁷³ *ibid.*

¹⁷⁴ *ibid.*

¹⁷⁵ Volker Lehmann, "Reforming the Working Methods of the UN Security Council: The Next ACT," *Friedrich-Ebert-Stiftung*, August 2013, 7.

¹⁷⁶ Global Centre for Responsibility to Protect, UN Security Council Code of Conduct, http://www.globalr2p.org/our_work/un_security_council_code_of_conduct

needed to improve the collective security system for humanitarian purposes, Banteka, claims “that a reformed UNSC would hinder the crystallization of R2P as a customary norm and its application to humanitarian crises.”¹⁷⁷ This is particularly the case because, “the potential UNSC reform is likely to give space to more political and regional power play than before, which would further decrease the capacity of the UNSC to invoke R2P.”¹⁷⁸

The military intervention in Libya and its problematical aftermath forced an amplification of these debates, and a reassessment of the extent to which the collective security apparatus, including the use of coercive action, is appropriate or sufficient to address these problems.¹⁷⁹ In response to the controversies spurred by the Libyan intervention, and the toxic political discussions described above, Brazilian diplomats led by then External Relations Ambassador Antonio de Aguiar Patriota prepared a concept note entitled “Responsibility While Protecting: Elements for the Development and Promotion of a Concept.”

Brazilian Initiative: Responsibility While Protecting

The proposal, “Responsibility while Protecting” (RwP) was presented by Brazil to the UNSC in November 2011 as a conscious effort to ensure that

¹⁷⁷ Nadia Banteka, “Dangerous Liaisons: The Responsibility to Protect and a Reform of the U.N. Security Council,” *Columbia Journal of Transnational Law* 54, no. 382 (2016): 423.

¹⁷⁸ *ibid.*

¹⁷⁹ Jennifer Welsh, “Civilian Protection in Libya: Putting Coercion and Controversy Back into RtoP,” *Ethics & International Affairs* 25, no. 3 (2011):255–262, as quoted in Marcos Tourinho, Oliver Stuenkel, and Sarah Brockmeier, “Responsibility while Protecting”: Reforming R2P Implementation,” *Global Society* 30, no. 1 (2016): 148.

the use of coercive action for civilian protection purposes produces minimum violence and instability. It entailed three major substantive elements. First, “it recommended that the three pillars of R2P “must follow a strict line of political subordination and chronological sequencing, and adhere to safeguards against unwarranted coercion.”¹⁸⁰ Second, it highlighted the need to establish a more prudent criteria for the authorization of coercive action for humanitarian purposes as specified under pillar III of the R2P.¹⁸¹ Third, “it called for better monitoring of the manner in which resolutions are interpreted and implemented, and stronger accountability measure for those who are granted the authority to use force while protecting.”¹⁸²

The Brazilian initiative was initially met with a tepid response by the P3 members and some of the policy makers who were unclear about whether RwP should be understood as an alternative to R2P or whether it should be seen as complementary to the doctrine.¹⁸³ The United States, France, and the United Kingdom refused to agree that the R2P doctrine remained unaffected by the new concept. Therefore, they were reluctant to discuss the establishment of a new criteria or greater accountability

¹⁸⁰ United Nations General Assembly Sixty Sixth Session, Letter dated 9 November 2011 from the Permanent Representative of Brazil to the United Nations addressed to the Secretary-General, 2011, A/66/551-S/2011/701. See also, Paula Wojcikiewicz Almeida, "Brazilian View of Responsibility to Protect," *Global Responsibility to Protect* 6, no. 1 (2014):47.

¹⁸¹ *ibid.*

¹⁸² United Nations General Assembly Sixty Sixth Session, Letter dated 9 November 2011 from the Permanent Representative of Brazil to the United Nations addressed to the Secretary-General, 2011, A/66/551-S/2011/701. See also Edward Newman, "R2P: Implications for World Order," *Global Responsibility to Protect* 5, no. 3 (2013): 250.

¹⁸³ Marcos Tourinho, Oliver Stuenkel, and Sarah Brockmeier, " "Responsibility while Protecting": Reforming R2P Implementation," *Global Society* 30, no. 1 (2016): 140.

mechanisms.¹⁸⁴ However, the concept eventually evolved through subsequent discussions that took place in the diplomatic circles and gained substantive attention in academia as well. While, some scholars consider RwP as a significant concept, there are others who have remained apprehensive towards it. With reference to R2P as an existing international norm, Acharya asserted, “the Brazilian initiative attests to the working of ‘norm subsidiarity’, a form of normative agency which occurs when the weaker elements in the international system seek to protect the integrity of an existing international norm ‘from dominance, neglect, violation, or abuse by more powerful central actors.’”¹⁸⁵ This view resonates with those put forward by Western and Goldstein, “mitigating concerns that R2P will be misused, RwP might help the international community strike the right balance between maintaining the support of the UNSC and effectively responding to mass atrocities in a timely manner.”¹⁸⁶ In his analysis, Morris applauded the Brazilian initiative by describing it as a “‘constructive, conceptual contribution’ to the debate on protection of civilians and R2P.”¹⁸⁷ However, negating these arguments, Bachman perceives RwP as incompetent.¹⁸⁸ He points out that, “though well-intended, Brazil’s proposal is ultimately short-sighted, primarily because, RwP cannot overcome the ulterior motives problem or the

¹⁸⁴ *ibid.*

¹⁸⁵ Amitav Acharya, "The R2P and Norm Diffusion: Towards A Framework of Norm Circulation," *Global Responsibility to Protect* 5, no. 4 (2013): 477.

¹⁸⁶ John Western and Joshua S. Goldstein, "R2P After Syria," *Foreign Affairs*, 2013.

¹⁸⁷ Justin Morris, "Libya and Syria: R2P and the spectre of the swinging pendulum," *International Affairs* 89, no. 5 (2013): 1279.

¹⁸⁸ Jeffrey Bachman, "R2P’s “Ulterior Motive Exemption” and the Failure to Protect in Libya," *Politics and Governance* 3, no. 4 (2015): 64.

accountability vacuum, which is unfortunate because accountability could be one of the only means to minimizing the ulterior motive problem.”¹⁸⁹ Likewise, taking a more stronger stand against RwP, Avezov pronounced, “while it is politically incorrect to say so, intervention is often guided by a calculation of economic, political, and human costs to the intervener. The concept of RwP realistically does not address these costs of intervention and how they influence the decision to intervene.”¹⁹⁰

With a critical analysis of these arguments, it can be substantiated that the ideas articulated in the Brazilian proposal provided an important starting point for advancing a debate on the use of coercive action and R2P at a time when discussions were extremely polarized. Further, the structure of debate established by the Brazilian proposal tried to narrow the gap between the ‘West and the Rest’ by allowing “for the participation of a wide range of states and civil society actors that belong to more diverse backgrounds than just traditional R2P advocates, such as, fellow BRICS countries (Brazil, Russia, India, China, South Africa) or the G77.”¹⁹¹ As an appreciation of the Brazilian effort and upon realizing its importance, the concept of RwP was included in the UN Secretary General’s report, ‘Report of the Secretary-General on the Responsibility to Protect: Timely and Decisive Response’ in July 2012. However, while the concept was extensively debated, by mid 2012, Brazil gradually retreated in its more

¹⁸⁹ *ibid.*

¹⁹⁰ Xenia Avezov, “‘Responsibility while protecting’: are we asking the wrong questions?” *Stockholm International Peace Research Institute*, January 30, 2013, <https://www.sipri.org/node/409>.

¹⁹¹ Marcos Tourinho, Oliver Stuenkel, and Sarah Brockmeier, “‘Responsibility while Protecting’: Reforming R2P Implementation,” *Global Society* 30, no. 1 (2016): 141. 68

explicit pursuit of developing RwP as a concrete diplomatic initiative. Firstly, despite the generalized acceptance of the concept, the UNSC's deadlock over Syria continued to linger. Secondly, there were several questions that were left unanswered such as, how can threshold be established for limiting action by the Council without a mechanism to control the legality of its resolutions? What kind of accountability or monitoring mechanisms were needed? How would it be possible to control the use of force by states authorized under the UNSC resolutions?¹⁹² Therefore, RwP was never sufficiently developed to formulate into a specific concept that could address the problems associated with collective security and humanitarian protection in practice.

As RwP lacked a concrete plan to be initiated, France came to the forefront with a new strategy in order to endure the discussions about enhancing the Council's accountability and building consensus around pillar III's application in Syria.

French-Mexico Initiative: Code of Conduct

In the midst of the growing debates about humanitarian protection and the increasing mass atrocities in Syria, another constructive proposal which offered some real hope for a UNSC reform was initiated by France. Since October 2011, Russia and China have used their veto power to stall any serious efforts to address crimes against humanity and war crimes

¹⁹² Paula Wojcikiewicz Almeida, "Brazilian View of Responsibility To Protect," *Global Responsibility to Protect* 6, no. 1 (2014): 62.

committed against the Syrian civilians. These two members of the UNSC have exercised their veto numerous times- Russia (eight) and China (six, plus one abstention) on resolutions aimed at resolving the Syrian conflict or even those suggesting an arms embargo against the Assad regime.¹⁹³ The Syrian conflict which began in 2011 is now in its seventh year and has killed over 460,000 lives.¹⁹⁴ However, the UNSC constrained by vetoes, proved to be powerless in the face of Syrian tragedy, which has further undermined its legitimacy. Moreover, the ability of the P5 members to over-ride the mandates of the UNSC and initiate war under the guise of humanitarian protection has arguably sabotaged the perception of the Council as a neutral and impartial arbitrator, and thus its credibility among the international community.

As a response to the irresponsible use of veto by the UNSC members, the President of French Republic, François Hollande, articulated in 2013 that “the five permanent members of the UNSC— China, France, Russia, Britain and the United States — themselves could voluntarily regulate their right to exercise their veto.”¹⁹⁵ It further specified that, “if the UNSC were required to make a decision with regard to a mass crime, the permanent members would agree to suspend their right to veto.”¹⁹⁶ In 2014, France and Mexico collaborated to take this initiative a step ahead by organising a

¹⁹³ Global Centre for Responsibility to Protect, UN Security Council Code of Conduct, http://www.globalr2p.org/our_work/un_security_council_code_of_conduct

¹⁹⁴ *ibid.*

¹⁹⁵ Laurent Fabius, "A Call for Self-Restraint at the U.N.," *The New York Times*, October 4, 2013, accessed September 30, 2017, <http://www.nytimes.com/2013/10/04/opinion/a-call-for-self-restraint-at-the-un.html?mcubz=0>.

¹⁹⁶ *ibid.*

ministerial meeting on the issue. The co-chairs of the meeting, the French Minister of Foreign Affairs and International Development, Laurent Fabius, and his Mexican counterpart José Antonio Meade Kuribreña, called on the P5 to “voluntarily and collectively pledge not to use the veto in case of genocide, crimes against humanity and war crimes on a large scale.”¹⁹⁷ According to the recommended framework, the UN Secretary General entailed the authority to determine whether the situation amounts to one of the mass atrocity crimes, if necessary at the request of the UN High Commissioner for Human Rights or of 50 UN member states.¹⁹⁸ In the following year, France with the support of Mexico launched a “political declaration on suspension of veto powers in cases of mass atrocities which focused only on the P5 members and called for their voluntary restraint of the use of veto.”¹⁹⁹

The Declaration is supported by 96 member states. However, Beijing and Moscow view the proposal as a rebuke for their behaviour over Syria and are not willing to be a part of it. The U.S. has show almost equal reluctance. Hence, apart from France, none of the other four permanent members of the UNSC - the United States, China, Britain and Russia, have formally signed up for the initiative.²⁰⁰

The France-Mexico initiative further provided a headway for the ACT

¹⁹⁷ United Nations Security Council, "UN Security Council Working Methods: The Veto", <http://www.securitycouncilreport.org/un-security-council-working-methods/the-veto.php>, 13th April 2017.

¹⁹⁸ *ibid.*

¹⁹⁹ Global Centre for Responsibility to Protect, "Political Declaration on Suspension of Veto Powers in Cases of Mass Atrocities", <http://www.globalr2p.org/resources/889>, 1st August 2015.

²⁰⁰ United Nations Security Council, "UN Security Council Working Methods: The Veto", <http://www.securitycouncilreport.org/un-security-council-working-methods/the-veto.php>, 13th April 2017. 71

Group which was established in 2013 with an aim to improve the Accountability, Coherence and Transparency of the UNSC. It sought to address both the Council's internal functioning as well as its relations to the broader UN membership.²⁰¹ In 2015, the ACT Group launched a "Code of Conduct" regarding the UNSC's action against genocide, crimes against humanity and war crimes. The Code of Conduct suggests all members of the UNSC, elected and permanent, to not vote against any credible draft resolution intended to prevent or halt mass atrocities.²⁰² Albeit, the support of 114 member states and 2 observers, the ACT group's Code of Conduct has not generated much of a hustle bustle among the international community or even in the academia.

Did the International Community learn its lesson in Libya?

There is no doubt that both these initiatives- RwP and the restraining of the veto power- came about as serious efforts to rectify the long-standing ills of the UNSC as far as humanitarian protection was concerned. However, it would be too ambitious to state that the international community has yet learnt its lesson from the military intervention in Libya. This is particularly because both these initiatives are still struggling- either to gain substantive support or being implemented in a way they are

²⁰¹Centre for UN Reform, The Accountability, Coherence and Transparency Group – Better Working Methods for today's UN Security Council-Fact Sheet, <http://centerforunreform.org/sites/default/files/FACT%20SHEET%20ACT%20June%202015.pdf>, 25th June 2015.

²⁰² Global Centre For Responsibility to Protect, "Political Declaration on Suspension of Veto Powers in Cases of Mass Atrocities", <http://www.globalr2p.org/resources/889>, 1st August 2015.

supposed to. In support of this argument, the remainder of this chapter critically assesses the two initiatives and highlights the loopholes they suffer from.

The failures of RwP

In order to evaluate the concept of RwP, it is important to understand its foundation and Brazil's aim behind stepping up its role when the UNSC reached a stalemate over the Syrian tragedy. While, RwP can certainly be considered as a reaction to the perceived abuse of the Libyan intervention and the severe consequences of exercising forceful measures that have aggravated existing conflicts, it was not the only reason that motivated Brazil. This has been underlined by Almeida, "this new strategy of RwP can be considered a direct outcome of alleged excesses committed during the implementation of Resolution 1973 but it is also an indirect consequence of Brazil's willingness to obtain a permanent seat on the Council, since its mandate as a non-permanent member was to end on 31 December 2011."²⁰³ Therefore, through the framework of RwP, Brazil aspired to improve its international standing and actively participate in actions taken within the UN. This further became clear in August 2012, when as a response to the growing apprehensions towards the concept, the Brazilian Minister of Foreign Affairs stated, "that Brazilian diplomats do not intend to further develop the idea of RwP in order to clarify it to the

²⁰³ Paula Wojcikiewicz Almeida, "Brazilian View of Responsibility To Protect," *Global Responsibility to Protect* 6, no. 1 (2014): 45.

international community.”²⁰⁴ He also stressed “that Brazil does not seek to impose a solution but rather to garner the opinions of other countries with respect to its proposal, and to rebuild consensus around situations involving R2P.”²⁰⁵ Moreover, the Brazilian diplomats were satisfied with the inclusion of their initiative into the UN agenda and the fact that it was being welcomed by the broader international community. If Brazil was really committed to resolving the problems associated with humanitarian intervention and work on the lessons learnt in Libya, it should have started to tackle the serious questions that were being asked regarding RwP, instead of pulling out from the discussions. In a way, Brazil conveniently shrugged the responsibility when its purpose of improving its “international image” was accomplished.

In addition, the concept of RwP strictly maintained that military interventions should not be guided by political or strategic motives of the decision makers. It also criticized the R2P doctrine by indicating that, “there is a growing perception that the concept of the responsibility to protect might be misused for purposes other than protecting civilians, such as regime change. This perception may make it even more difficult to attain the protection objectives pursued by the international community.”²⁰⁶ Based on this analysis, one can say that if the international community had learnt its lesson in Libya and if the concept of RwP was

²⁰⁴ *ibid* p.63.

²⁰⁵ *ibid*.

²⁰⁶ United Nations General Assembly Sixty Sixth Session, Letter dated 9 November 2011 from the Permanent Representative of Brazil to the United Nations addressed to the Secretary-General, 2011, A/66/551-S/2011/704

really consequential for authorization of the use of coercive action then, the Syrian crisis would not have become such a tragic situation. Despite intensified discussions on R2P, Russia and China have prioritized their political and geostrategic motives over humanitarian protection in Syria and continued to block any UN resolution that can impair their relationship with the Assad regime. The impact of military intervention in Libya has proved to be extremely disastrous but despite that, the members of the UNSC are willing to exercise R2P as a tool for their self interest- clearly the lesson has not been learnt.

The Failure of 'Code of Conduct'

On the other hand, the French-Mexican initiative, which called upon the P5 members to restrain their use of veto powers in the face of mass atrocities, has not been able to garner adequate support. Only two of the P5 members- France and the United Kingdom are willing to advocate or even spearhead the initiative. This is primarily because the P5 members are not interested in relinquishing their power by constraining the use of veto. Similar divisions are also evident in the UNGA over the ACT Code of Conduct where members have expressed concerns about the proposal on the grounds that it is too ambitious, and could stifle meaningful, albeit less far reaching, change. These states believe that the proposal has not gone far enough, as in, it should have been extended from mass atrocity situations to include veto restraint in regard to the UN Secretary General

selection and requests that are being made for the UN membership.²⁰⁷ While, the Libyan crisis clearly indicated the need for a constructive 'West and the Rest' dialogue for future military interventions and progress of the R2P doctrine, the divisions among the UNSC or even the UNGA over the 'restrain the veto campaign' (which can make a real difference as far as humanitarian protection is concerned), showcase their reluctance to undertake any measures for improving R2P. More interestingly, in order to pursue their political and strategic interests, the P5 members continue to exercise their veto power as they deem necessary. In April 2017, Russia vetoed a UN resolution "that would have condemned the suspected use of chemical weapons in northern Syria and demanded a speedy investigation."²⁰⁸

To conclude, these gaps, such as the members pursuing their political and strategic interests, aiming for regime change through the disguise of R2P, exercising veto despite grave humanitarian situations, divisions among the UNSC or the UNGA members- all prove that the international community has not learnt its lesson from the 2011 intervention.

²⁰⁷ Ethan Chorin, "NATO's Libya Intervention and the continued case for a "Responsibility to Rebuild", " *Boston University of International Law* 31, no. 365 (2013): 386.

²⁰⁸ Al-Jazeera, "Russia slammed for vetoing yet another Syria resolution," April 13, 2017, accessed September 28, 2017, <http://www.aljazeera.com/news/2017/04/russia-veto-syria-resolution-170413004627326.html>. 76

Conclusion

The Libyan military intervention was a litmus test for the principles of R2P and in some ways served as the greatest achievement for the doctrine since an overt threat that raised genuine concerns about the possibility of imminent human rights violations was countered quickly and decisively. Yet, it has also proved to be a major hindrance for the doctrine, displaying the pathologies of its interpretation and implementation by the intervening forces as I have highlighted in this thesis. The three main lessons that can be carved out from R2P's implementation in Libya can be summarized as: reforming the UNSC's practices, which paves a way for the development of a collective approach to respond to mass atrocity situations; prioritization of the prevention of atrocity crimes and humanitarian protection motives over the intervening state's political or geo-strategic interests; and the extension of R2P doctrine to include R2R, which urges the intervening state to provide some sort of post-intervention state-building assistance to conflict affected societies.

The setbacks of the military intervention in Libya calls for a stricter enforcement of R2P's criteria of last resort and proportionality, and greater accountability in operation conducted in defence of the international norm. These gaps can be filled by a serious reflection on the ethical and practical considerations regarding the use of force that has

been specified by the Just War Tradition and with their incorporation into R2P's human security paradigm, which values respect, security and development for the protection of innocent civilians. The principles of Just War Theory provide a strong foundation for R2P to develop into a true exception to the prohibition on the use of force, allowing the possibility of force in response to heinous crimes. It further offers a framework for understanding where R2P's application may or may not be legitimate, which could possibly serve as a stronger case for the acceptance and widespread recognition of the doctrine. In addition, it levies upon the intervening state the responsibility to rebuild peace and a minimal status quo in the conflict prone zone. The responsibility of the international community to provide assistance for the process of state reconstruction after an intervention in the name of R2P, as specified by the *jus post bellum* principle of the Just War Theory could represent another moral justification of military intervention under the humanitarian protection doctrine.

In summation, the doctrine of R2P is an important development of the contemporary period, particularly due to mass human rights violations in countries like Libya and Syria. Nonetheless, despite its emergence as an important norm within the IR discipline, it lacks moral and ethical justification, accountability frameworks, and appropriate political will for combating warfare in cases of humanitarian protection. Therefore,

successful future application of R2P requires the international community to undertake serious and collective efforts to resolve the problems associated with the doctrine's application in Libya, and draw upon the principles of the Just War Tradition, which will provide a moral justification for military interventions. This would make the doctrine of R2P more legitimate and applicable.

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